U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

H2

[redacted]

FILE: [redacted] Office: DETROIT, MICHIGAN Date: NOV 19 2009

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Detroit, Michigan, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [redacted] is a native and citizen of India who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of committing a crime involving moral turpitude. [redacted] has two sons. His oldest son is a lawful permanent resident of the United States, and his youngest son is a naturalized citizen of the United States. [redacted] parents are naturalized citizens of the United States. [redacted] sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so as to immigrate to the United States. The director concluded that [redacted] had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director, dated March 6, 2009.* The applicant submitted a timely appeal.

On appeal, counsel states that [redacted] is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed by his mother. He states that [redacted] as an arriving alien was placed in removal proceedings because he was convicted of committing a crime involving moral turpitude. Counsel states that [redacted] filed an adjustment application along with a section 212(h) waiver application and that the waiver application was denied before supporting documents were filed. Counsel maintains that the denial of the waiver application was erroneous because a Notice of Intent to Deny was not issued. Counsel further states that the director's failure to articulate why he denied the waiver application resulted in a denial of due process on the ground that [redacted] was deprived of the opportunity for a meaningful review. According to counsel the health condition of [redacted] parents and the role [redacted] plays in supporting his parents demonstrates extreme hardship. The combination of hardship to [redacted] parents and sons, counsel states, amounted to extreme hardship.

It is noted that counsel does not dispute the fact that the director was correct in finding [redacted] inadmissible under section 212(a)(2)(i)(I) of the Act for having been convicted of committing a crime involving moral turpitude. The record reflects that [redacted] was convicted of "accosting child for immoral purposes" in violation of section 750.145a of the Michigan Penal Code. He was sentenced to either 12 months imprisonment, or his sentence would be suspended based upon completion of deportation proceeds or upon being taken into federal custody for deportation proceedings. [redacted] is required to register as a sex offender. His sentence began on January 10, 2008.

A waiver is available for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. Section 212(h) of the Act provides, in pertinent part:

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

> (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relatives here are the applicant's naturalized citizen parents and his naturalized citizen son and his lawful permanent resident son. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship a qualifying relative pursuant to section 212(i) of the Act. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 565-566.

In *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

The record contains letters, income tax documents, a psychological evaluation, medical records, birth certificates, naturalization certificates, a diagnostic assessment, and other documentation.

In rendering this decision, the AAO will consider all of the evidence in the record.

Extreme hardship to [redacted] qualifying relative must be established in the event that the qualifying relative remains in the United States without [redacted] and alternatively, if the

qualifying relative joins [redacted] to live in India. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.
With regard to remaining in the United States without the applicant, [redacted] oldest son, [redacted] indicates that since his father's absence he and his brother have been through a financial crisis and he has been unable to continue his education. *Undated letter by* [redacted]. [redacted] youngest son, [redacted] states that he and his brother are living together and are having a hard time financially without their father. *Letter by* [redacted] *dated February 26, 2009.* The diagnostic assessment of [redacted] by [redacted] a licensed psychologist, conveys that [redacted] reported that without his father he will have to quit school and find a job. [redacted] further reports that [redacted] who is 23 years old, is a taxi driver. [redacted] diagnosed [redacted] with major depressive disorder as a result of separation from his father. The psychological evaluation of the applicant by [redacted] dated March 19, 2009, conveys that the applicant's sons resided with him in an apartment until his incarceration.

Although the applicant's sons claim that in the absence of their father they have experienced financial hardship and are not able to continue their education, no documentation has been presented to establish that they have been unable to continue their education without their father's financial support. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, neither [redacted] nor [redacted] explain why they would be unable to receive financial assistance from their mother or other relatives in the United States.

The diagnostic assessment of [redacted] indicates that he has major depressive disorder. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted diagnostic assessment is based on a single interview between the applicant's son and [redacted] The record fails to reflect an ongoing relationship between a mental health professional and the applicant's son or any history of treatment for the major depressive disorder experienced by the applicant's son. Moreover, the conclusions reached in the submitted assessment, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering findings speculative and diminishing the assessment's value in determining hardship.

With regard to the hardship of the applicant's parents if they were to remain in the United States without the applicant, the applicant's father, [redacted], has coronary artery disease and severe chronic obstructive pulmonary disease, and is legally blind. *Letter by Henry Ford Medical Center dated April 13, 1999; Letter by* [redacted] *dated December 3, 1998.* The Medical Certificate for Disability Expections dated December 28, 2001, conveys that [redacted] has schizophrenia, paranoid type. The applicant's father states in a letter dated February 10, 2009, that the applicant has been helpful in keeping him and his wife out of a nursing home. The applicant's younger brother, [redacted], states that he, the applicant, and their sister have been taking care of their parents, but that he is not as involved as the applicant in taking care of their parents because of the nature of his job. *Letter by* [redacted], *dated February 24, 2009.*

The AAO finds that the applicant has assisted in the care of his parents; however, his parents would not experience extreme hardship if they remained in the country without the applicant as their other adult children have been assisting them. In addition, the AAO notes that the income tax records show the applicant's parents are dependents of their youngest son, who earned income of $219,676 as a physician.

The letters in the record reflect that applicant has a close relationship with his sons, parents, and siblings. Family separation must be considered in determining hardship. *See, e.g., Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) ("the most important single hardship factor may be the separation of the alien from family living in the United States").

However, courts have found that family separation does not conclusively establish extreme hardship. In *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS,* 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). *Perez v. INS,* 96 F.3d 390, 392 (9th Cir. 1996), states that "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir.1991).

The AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of family separation. It has taken into consideration and carefully reviewed the evidence in the record. After careful consideration, it finds that the situation of the applicant's sons and parents, if they remain in the United States without the applicant, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record conveys that the emotional hardship to be endured by the applicant's sons and parents is a heavy burden, but it is not unusual or beyond that which is normally to be expected upon removal. *See Hassan* and *Perez, supra.*

In considering all of the hardship factors presented, both individually and in the aggregate, the AAO finds those factors fail to demonstrate that a qualifying relative would experience extreme hardship if he or she were to remain in the United States without the applicant.

There is no claim made that the applicant's qualifying relative would experience extreme hardship if he or she were to join the applicant to live in India.

Based upon the record before the AAO, the applicant in this case fails to establish extreme hardship to a qualifying family member for purposes of relief under section 212(h) of the Act, 8 U.S.C. § 1182(h).

The AAO also finds that the waiver application should be denied as a matter of discretion.

[redacted]

In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). In evaluating whether relief is warranted in the exercise of discretion, the factors adverse to the alien may include the nature and underlying circumstances of the removal ground at issue:

> [T]he presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must:

> [B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.

Id. at 300. (Citations omitted).

The adverse factor in the present case is the applicant's criminal conviction in January 2008 for the offense of accosting child for immoral purposes under Michigan law. The favorable factors in the present case are the applicant's family ties in the U.S.; his church activities; and letters commending his character.

The AAO finds that the criminal offense committed by the applicant is very serious in nature and the favorable factors in this case fail to outweigh the adverse factor, such that the waiver application should be denied as a matter of discretion.[1]

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

---

[1] The AAO notes that the applicant was removed from the United States in October 2009, rendering the Form I-485 adjustment application moot. If he wishes to reenter the United States he will need to apply for a visa with the U.S. consular office with jurisdiction over his place of residence. At that time he will need to file a new Form I-601 as well as a Form I-212 Request for Permission to reenter the U.S. after removal.