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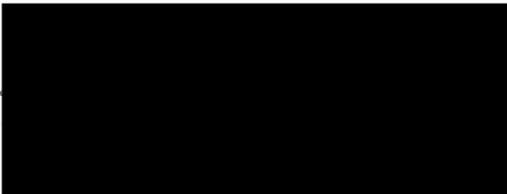
IN RE:

FRANCILIEN FERNAND

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:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office



DISCUSSION: The waiver application was denied by the District Director, Miami, FL. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native of the Bahamas and a citizen of Haiti 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 crimes involving moral turpitude. The record indicates that the applicant is the son of a lawful permanent resident. The applicant seeks a waiver of inadmissibility in order to reside with his father in the United States.

The district director found that the applicant failed to demonstrate that his father would suffer extreme hardship if he were denied permanent residence. The director also found that the adverse factors in the applicant's case outweigh the positive factors in his case. The application was denied accordingly. *District Director Decision*, dated September 27, 2004.

On appeal, counsel asserts that none of the applicant's convictions were for crimes of violence or drug related. He also states that the applicant's father would suffer extreme hardship as a result of being separated from the applicant and that the director did not properly analyze the impact of this separation. Counsel cites various cases to support his claims. *Counsel's Brief*, undated

The record indicates that the applicant was convicted of Dealing in Stolen Property on April 18, 2002. The AAO notes that the record also indicates that the applicant has a January 21, 2002 arrest for dealing with stolen property, but no record of a conviction. In addition, the misdemeanor convictions on the applicant's record for Disorderly Conduct, Failing to Remain on the Sidewalk, and Violation of Probation are not crimes involving moral turpitude. Therefore, the only crime of moral turpitude committed by the applicant is the April 18, 2002 conviction for Dealing in Stolen Property.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) states in pertinent part that:

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-

(1)(A) [I]t is established to the satisfaction of the Attorney General that-

(i) [T]he activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(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 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.

The actions leading up to the applicant's conviction occurred on April 15, 2002, less than 15 years ago. The applicant is therefore statutorily ineligible for a waiver pursuant to section 212(h)(1)(A) of the Act. He is however, eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(B) of the Act.

A section 212(h)(B) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship the alien himself experiences due to separation is irrelevant to section 212(h)(B) waiver proceedings unless it causes hardship to the applicant's father. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560; 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and

separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

The AAO notes that extreme hardship to the applicant's father must be established in the event that he resides in Haiti or in the event that he resides in the United States, as he is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The applicant does not address the hardship his father would face if he were to relocate to Haiti with the applicant. Counsel briefly addresses the hardship the applicant's father would face if the applicant were removed from the United States. In counsel's appeals brief, he asserts that the applicant's father would suffer extreme hardship as a result of being separated from the applicant. The applicant's father states in his declaration that the applicant's entire family is in the United States and the applicant would have no one to return to in Haiti.

In support of his claims regarding separation alone being sufficient to establish extreme hardship, counsel cites numerous Circuit Court decisions and BIA cases. Two of the cases, *Matter of Edwards*, Interim Decision #3134 (BIA 1990) and *Diaz-Resendez v. INS*, 960 F.2 493 (5th Cir. 1992) refer to the weighing of equities and the Service's favorable exercise of discretion. The AAO notes that before the Service makes a determination of whether to exercise discretion, the applicant must establish extreme hardship to his qualifying relative. Furthermore, the AAO notes that the precedent case regarding the interpretation of extreme hardship is *Matter of Cervantes-Gonzalez*. The cases cited by counsel pre-date *Matter of Cervantes-Gonzalez*, by at least 11 years.

The AAO also notes that family separation is given considerable weight in determining extreme hardship, however counsel must submit documentation to support his hardship claims. The record contains no documentation to support the claims made by counsel or the assertions made by the applicant's father. There is no evidence in the record specifying the details and/or the extent of the hardship family separation would cause for the applicant's father. Therefore, the AAO finds that the current record does not support a finding that the applicant's father would suffer extreme hardship as a result of the applicant's inadmissibility.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's father caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

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

ORDER: The appeal is dismissed.