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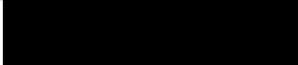
U.S. Citizenship
and Immigration
Services

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FILE:



Office: MONTERREY, MEXICO

Date:

JUL 30 2007

IN RE:



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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Monterrey, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Bahamas who was found to be inadmissible to the United States pursuant to § 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 applicant is married to a United States citizen, and he is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility pursuant to § 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside with his wife in the United States.

The officer in charge (OIC) concluded that the applicant had failed to establish that his wife would suffer extreme hardship; hence, he denied the waiver. The AAO notes that the applicant indicates that he is represented by attorney [REDACTED] of Studio City, California; however, as the record does not contain a Notice of Entry of Appearance (Form G-28), no correspondence can be sent to [REDACTED]. On the Notice of Appeal (Form I-290B), the applicant also indicates that he submits a separate brief or other evidence on appeal, but as of this date, the AAO has received no additional evidence in support of the appeal. Therefore, the record is complete. On the Form I-290B, the applicant states that the OIC failed to properly consider the hardships his wife will suffer if the applicant's waiver of inadmissibility is not granted. The AAO has considered the entire body of evidence and concurs with the decision of the OIC.

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

(A)(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) of the Act provides, 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) (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 record reflects that the applicant was convicted of the following crimes in the Bahamas: two counts of stealing from a dwelling and two counts of shop breaking on April 10, 2000, for which he was sentenced to two years incarceration; possession of dangerous drugs on September 28, 2000, for which he was sentenced to five months in jail (concurrent with the former sentence); and two counts of possession of ammunition and possession

of an unlicensed firearm on December 4, 2002, for which he was sentenced to pay a fine of \$10,200 or serve three years in prison. The applicant chose to pay the fine.

A crime involves moral turpitude where knowing or intentional conduct is an element of the offense. *Matter of Perez-Contreras*, 20 I&N Dec. 615, 618 (BIA 1992). In this case, as the sections of the Bahamian Firearms Act violated by the applicant in 2002 do not include any element of knowing or intentional conduct, the applicant's unlawful possession of a firearm and ammunition does not constitute a crime involving moral turpitude. The other crimes, however, were offenses involving moral turpitude.

The pertinent activities for which the applicant was convicted occurred less than 15 years prior to this application. The applicant is therefore statutorily ineligible for a waiver pursuant to § 212(h)(1)(A) of the Act. He is eligible to apply for a waiver of inadmissibility pursuant to § 212(h)(B) of the Act.

A waiver of the bar to admission to the United States is dependent upon the alien's showing that the bar imposes an extreme hardship on a qualified family member. Congress provided this waiver but limited its application. By this limitation, it is evident that Congress did not intend that a waiver be granted merely due to the fact that a qualifying relationship exists. The key term in the provision is "extreme." Therefore, only in cases of great actual or prospective injury to the United States citizen or permanent resident will the bar be removed. Common results of the bar, such as separation, financial difficulties, and such, in themselves are insufficient to warrant approval of an application unless combined with more extreme impacts. See *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968).

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 had established extreme hardship. The factors included 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. In *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), the BIA held that "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

In his statement submitted with the waiver application, the applicant explained his family background, touching on the hardships he endured while growing up, and describing the circumstances surrounding the crimes of which he was convicted. The applicant also described how his U.S. citizen wife was suffering financially, because she had to spend a great deal of money on travelling to the Bahamas to see the applicant. He stated that his wife also suffered emotionally due to their separation. The AAO acknowledges the challenges the applicant's wife has faced; however, there is no evidence on the record to establish that her suffering goes beyond that of similarly situated spouses.

U.S. court decisions have repeatedly held, however, 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, in

Matter of Pilch, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In this case, the applicant has failed to establish that the stress of separation that his wife experiences and her excessive travel expenses are other than normal consequences of his inadmissibility. A review of the record, when considered in its totality, reflects that the applicant has failed to show that his wife would suffer extreme hardship if his waiver of inadmissibility application is denied. Having found the applicant ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(a)(2)(A) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 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.