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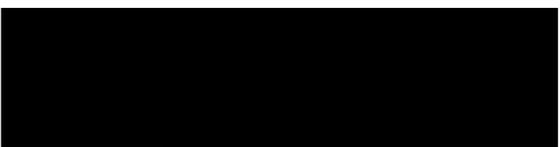
U.S. Department of Homeland Security
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U.S. Citizenship
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FILE:

Office: HONOLULU, HAWAII

Date:

NOV 07 2007

IN RE:



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

ON BEHALF OF PETITIONER:



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 Interim District Director, Honolulu, Hawaii, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The waiver application will be denied.

The applicant, a citizen of Samoa, was found inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant was also found inadmissible under 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 a crime involving moral turpitude. The applicant is married to a U.S. citizen, and has two U.S. citizen children. The applicant seeks waivers of inadmissibility under sections 212(i) and 212(h) of the Act in order to reside in the United States with his wife and daughters.

The interim district director concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Interim District Director*, dated September 22, 2003.

In support of the appeal, counsel for the applicant has provided the following documents: a brief in support of the appeal, dated October 24, 2003; a letter from the applicant's spouse's physician confirming that she is eight weeks pregnant, dated October 10, 2003; and confirmation of the applicant's restitution payments to the State of Hawaii based on his November 2000 conviction in the First Circuit Court of Hawaii, as an Accomplice to Theft in the Second Degree. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (Secretary), waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General (Secretary) that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

Section 212(a)(2) of the Act provides, in pertinent part:

- (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:

- (h) The Attorney General [now Secretary, Homeland Security, "Secretary"] 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 [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 . . .

Regarding the applicant's ground of inadmissibility under Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(i), the record establishes that the applicant used an assumed name and fraudulent documents to enter the United States. The interim district director correctly found the applicant to be inadmissible to the United States based upon fraud or willful misrepresentation.

Regarding the applicant's ground of inadmissibility under section 212(a)(2) of the Act, the record establishes that the applicant was convicted of a crime involving moral turpitude in the State of Hawaii on November 28, 2000. Specifically, he was convicted as an Accomplice to Theft in the Second Degree, a Class C felony. The maximum penalty possible for such an offense is imprisonment for five years; the applicant was placed on probation for five years and ordered to make restitution to the State of Hawaii in the amount of \$9,837.73. The interim district director correctly found the applicant to be inadmissible to the United States based upon the applicant's commission of this crime involving moral turpitude.

Thus, the first issue to be addressed is whether the applicant's grounds of inadmissibility would impose extreme hardship on a qualifying family member. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of*

Cervantes-Gonzalez, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA held in *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

This matter arises in the Honolulu district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

The record contains several references to the hardship that the applicant’s children would suffer if the applicant were to depart the United States. Section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. As such, the AAO will first evaluate the applicant’s appeal based on the factors outlined in section 212(i) of the Act, as section 212(i) is the more restrictive of the two inadmissibility waiver provisions to which the applicant is subject. Only if extreme hardship to the applicant’s spouse is found will the AAO then analyze whether the applicant is eligible for a waiver under section 212(h) of the Act. The applicant must be found eligible under both waiver provisions before the AAO will analyze whether the applicant merits a waiver as a matter of discretion.

The applicant’s spouse, a U.S. citizen, first states that she will suffer emotional hardship were the applicant removed from the United States. As she states, “...My husband [the applicant] never ever abuses or beat me up or even frightens me. He is a very good person and I want to spend the rest of my life with. Sometimes, when he has jobs in Maui, it is really hard for me and the girls to live without him.

I don't know what to do without him. I do believe how devastated I'm going to be if he will be forced to return to Western Samoa..." *Affidavit from* [REDACTED] dated March 14, 2002.

A psychological evaluation is provided by counsel. In said evaluation, [REDACTED] Licensed Psychologist, discusses at length the hardship the applicant's children, who are not qualifying relatives for a 212(i) waiver, will encounter were the applicant removed from the United States. In conclusion, [REDACTED] states "...In the event the father were absent, the mother would become responsible for all family activities. This would be a hardship upon her..." *Evaluation and Assessment from* [REDACTED], *Licensed Psychologist*, dated April 23, 2001.

There is no documentation establishing that the applicant's spouse's emotional or psychological hardship is any different from other families separated as a result of immigration violations. Moreover, although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's family and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse. Moreover, the conclusion reached in the submitted evaluation, being based on a single interview, does not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's finding speculative and diminishing the evaluation's value to a determination of extreme hardship.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal 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 applicant's spouse further states that she will suffer financial hardship were the applicant removed from the United States. As stated by the applicant's spouse, "...My husband [the applicant] also pays most of our bills. Because my paycheck is not enough for all the bills, I cannot afford to survive with my two daughters without him..." *Supra* at 6. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they

currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

Although the applicant's spouse may need to make alternate arrangements with respect to her financial situation, it has not been established that such arrangements would cause her extreme hardship. 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)). Moreover, counsel provides no evidence to substantiate that the applicant, currently working in the roofing industry, would not be able to find employment were he to relocate to Samoa, or any other country of his choosing, thereby assisting the applicant's spouse with the household expenses. Finally, counsel states that were the applicant removed, the family "...will be reduced not to economic hardship but to poverty as the income of the Applicant's wife will fall below the poverty level of \$23,000 for a 4-member family." *Brief in Support*, dated October 24, 2003. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request. In this case, the applicant's spouse states that she does not wish to relocate to Samoa because "...I want to stay here too, because I get sick a lot and I still worried about my surgery. The hospitals in Samoa are not as good as down here...." *Supra* at 6. Counsel has not provided any documentation to establish the applicant's specific medical ailments, their gravity, and their short and long-term treatment. Nor has counsel provided evidence that the health system in Samoa is problematic, and that residing in Samoa would cause the applicant's spouse extreme hardship. Finally, it has not been established that the applicant and his spouse would be unable to obtain employment in Samoa that would provide the applicant's spouse with appropriate medical coverage.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse will face extreme hardship if the applicant is refused admission under Section 212(a)(6)(C) of the Act, for fraud or willful misrepresentation. The record demonstrates that she faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although CIS is not insensitive to her situation, the financial strain and the emotional hardship of separation are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law. As extreme hardship has not been found under the criteria outlined

in section 212(i), the AAO does not find it necessary to analyze whether the applicant is eligible for a waiver under section 212(h) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden.

ORDER: The appeal is dismissed. The waiver application is denied.