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U.S. Citizenship
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FILE:

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Office: LOS ANGELES, CALIFORNIA

SEP 06 2007
Date:

IN RE:

[REDACTED]

PETITION: 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 PETITIONER:

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 District Director, Los Angeles, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Sweden who was found to be inadmissible to the United States 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 the spouse of a U.S. citizen and the father of two U.S. citizen children. He now seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his spouse and children.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 20, 2005.

On appeal, the applicant contends that Citizenship and Immigration Services (CIS) erred in finding that the applicant failed to meet the burden of establishing extreme hardship to his qualifying relative necessary for a waiver under 212(h) of the Act. *Form I-290B; Applicant's brief*, dated October 19, 2005.

In support of his assertions, the applicant submits a brief. The record also includes, but is not limited to, statements from the applicant's spouse; published country condition reports on Egypt; a statement from the applicant; a certificate of identity; letters of support from the community and friends; a custody order after hearing, Superior Court of California, County of San Joaquin, dated November 22, 1999; child support payment statements; a copy of the applicant's Swedish passport; family photographs; tax statements for the applicant and his spouse; criminal court documents, Municipal Court of Los Angeles, [REDACTED] Judicial District, County of Los Angeles, State of California; letters of employment for the applicant; and earnings statements and Forms W-2 for the applicant and his spouse. The entire record was considered in rendering a decision on the appeal.

The applicant considers himself to be a citizen of Egypt, and the record contains a certificate of identity stating that the applicant is a citizen of the United Arab Republic (UAR). *Applicant's brief; Certificate of Identity*, dated May 7, 1979. While the AAO acknowledges the applicant's assertion that he is an Egyptian citizen, it notes that the record includes a Swedish passport issued to the applicant which was used to gain admission into the United States. *See Swedish passport*. The applicant was born in Sweden, as was his mother who continues to reside in Sweden. *Form G-325A for the applicant*. His father was born in Egypt. *Id.* The record does not contain an Egyptian passport issued to the applicant. Furthermore, the applicant stated on his Form G-325A, Biographic Information sheet, that his nationality was Swedish, not Egyptian. *Form G-325A for the applicant*. Swedish citizenship laws are based on the principle of descent which means that citizenship is acquired at birth if one parent is a Swedish citizen. *Government Offices of Sweden*, [REDACTED] The most manifest proof of citizenship is a Swedish passport and, as a citizen of Sweden, an individual has an unconditional right to stay in Sweden. *Id.* Based on the fact that the applicant was issued a Swedish passport, which he used for travel purposes, and that his mother was born in Sweden and continues to reside there, the AAO finds that the applicant is a Swedish citizen and will analyze this case accordingly. Moreover, the AAO notes that the certificate of identity stating that the applicant is a citizen of the UAR was issued by the Parish of Vastra Skravlinge in Malmo, Sweden in 1979,

not a UAR government authority between 1958 - 1972, the years in which Egypt was known as the United Arab Republic.

The applicant has the following criminal history. On February 27, 1995 the applicant was convicted of Inflicting Corporal Injury on a Spouse. He was placed on probation for 36 months. On November 9, 1995 the court found that the applicant had violated his probation and sentenced him to 60 days in jail. On May 22, 1996 the applicant was convicted of Carrying a Concealed Weapon in a Vehicle. He received a sentence of 60 days in jail and was placed on probation for 36 months. *See criminal court documents, Municipal Court of Los Angeles, Van Nuys Judicial District, County of Los Angeles, State of California.* On July 17, 1996 the applicant was convicted of Carrying a Loaded Firearm in Public and Possession of Less Than One Ounce of Marijuana. He received a sentence of 180 days in jail and was placed on probation for three years. On October 22, 1999 the applicant was convicted of failure to stop at a stop sign for which he had to pay a fine. *See criminal court documents, Municipal Court of Antelope Judicial District, County of Los Angeles, State of California.* Carrying a concealed weapon does not involve moral turpitude. *Matter of Granados*, 16 I&N Dec. 726 (BIA 1979); however, use of weapons in the course of other crimes may indicate moral turpitude. *Matter of Logan*, 17 I&N Dec. 367 (BIA 1980). Furthermore, Inflicting Corporal Injury on a Spouse under the California Penal Code involves an intent element. *See California Penal Code section 273.5(a).* Where knowing or intentional conduct is an element of an offense, the Board of Immigration Appeals has found moral turpitude to be present. *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992). Thus the applicant has been convicted of a crime involving moral turpitude.

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

(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 . . . 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 [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 . . .

Section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (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. These factors included the presence of lawful permanent resident or United States citizen family ties to 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 AAO notes that extreme hardship to the applicant's spouse or children must be established in the event that either his spouse or children reside in Sweden or the United States, as neither his spouse nor children are required to reside outside of 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.

Based on his claim to Egyptian citizenship, the applicant has asserted that his spouse and children would suffer extreme hardship were he returned to Egypt, regardless of whether they joined him in Egypt or remained in the United States. However, as previously noted, the record establishes the applicant as a Swedish rather than Egyptian citizen. Accordingly, the aspects of the applicant's claim related to the impact of his or his family's relocation to Egypt will not be considered in this proceeding. Instead, the AAO will consider only the evidence of record that is not dependent on Egyptian country conditions and would apply were the applicant to be returned to Sweden.

If the applicant's spouse travels with the applicant to Sweden, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States, as were her parents. *Form G-325A for the applicant's spouse*. The record does not show that the applicant's spouse has any family ties to Sweden. The applicant's spouse stated that in addition to the child she shares with the applicant, she has three additional children from a previous marriage who live with the applicant and herself. *Statement from the applicant's spouse*, dated October 20, 2005. According to the applicant's spouse, because the applicant is not their biological father, it would be impossible to take them out of the United States, as their biological father would not allow it. *Id.* While the applicant's spouse stated that she has sole custody over her children, as her former spouse was incarcerated for a number of felonies, the AAO notes that the record fails to include documentation showing that the applicant's spouse has sole custody, as the court order included in the record shows joint custody between the applicant's spouse and her ex-husband. *Order After Hearing, Superior Court of California, County of San Joaquin*, dated November 22, 1999. The joint custody order, as it stands, precludes the relocation of the children outside of the U.S. because of the visitation schedule with their father. As a result, it prevents the children from relocating to Sweden. The applicant's spouse asserts that to be separated from her children would cause her an extreme emotional hardship and she would be inconsolable. *Statement from the applicant's spouse*, dated October 20, 2005. Furthermore, even if the record demonstrated that the children's biological father had agreed to their relocation outside the U.S., having to move four children between the ages of 10 and 16 to Sweden where they do not speak the language or understand the culture is enough to establish extreme hardship. When looking at the aforementioned factors, the AAO finds that the applicant demonstrated extreme hardship to his spouse if she were to reside in Sweden.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As noted previously, the applicant's spouse's parents reside in the United States. *Form G-325A for the applicant's spouse*. The applicant's children reside with her in the United States. *Statement from the applicant's spouse*, dated October 20, 2005. The applicant's spouse stated that she does not have the skills to find employment that would pay her anything other than the minimum wage and would not be able to work full-time because of her commitments to the children. *Id.* She further stated that it would be financially impossible to hire someone to care for her children. *Id.* While the AAO acknowledges these financial responsibilities, it notes that there is nothing in the record to show that the applicant would be unable to obtain a job in Sweden and assist his family financially and thus reduce the burden on his spouse. Furthermore, the record fails to address whether the applicant's spouse has any relatives, such as her father who according to the Form G-325A Biographic Information lives in Palmdale, California, who could assist her with some of her child care responsibilities. Apart from suffering financially, the applicant's spouse stated that if she remained in the United States, she would also suffer emotionally. *Id.* U.S. court decisions have repeatedly 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). *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 recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the record does not distinguish her situation, if she remains in the United States, from that of individuals separated as a result of removal and therefore, it does not rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in the United States.

The applicant has two biological U.S. citizen children and three stepchildren. If the applicant's children travel with the applicant to Sweden, the applicant needs to establish that his children will suffer extreme hardship. The applicant's children were born and raised in the United States. *Form I-485*. While the majority of their family members live in the United States, the grandmother of the applicant's biological children lives in Sweden. *Form G-325A for the applicant*. As previously noted, the applicant's spouse stated that she has sole custody over her children, as her former spouse was incarcerated for a number of felonies; however, the AAO notes that the record fails to include documentation showing that the applicant's spouse has sole custody, as the court order included in the record shows joint custody between the applicant's spouse and her ex-husband. *Order After Hearing, Superior Court of California, County of San Joaquin*, dated November 22, 1999. The joint custody order, as it stands, precludes the relocation of the children outside of the U.S. because of the visitation schedule with their father. As a result, it prevents the children from relocating to Sweden and establishes extreme hardship by default. Furthermore, even if the record demonstrated that the biological father of the applicant's stepchildren had agreed to their relocation outside the U.S., having to move four children between the ages of 10 and 16 to Sweden where they do not speak the language or understand the culture is enough to establish extreme hardship. When looking at the

aforementioned factors, the AAO finds that applicant demonstrated extreme hardship to his children if they were to reside in Sweden.

If the applicant's children reside in the United States, the applicant needs to establish that his children will suffer extreme hardship. One of the applicant's children does not live with the applicant. *Form I-601*. The applicant pays child support to his child from a previous marriage. *See child support payment statements*. There is nothing in the record to show that the applicant would be unable to obtain employment in Sweden and continue to pay child support for the child from his previous marriage and contribute to the financial obligations of his other family members. The applicant's spouse stated that she has three children from a previous marriage who live with the applicant and herself. *Statement from the applicant's spouse*, dated October 20, 2005. These children and the child born to the applicant and his spouse are totally dependent on the applicant for financial and emotional support. *Id.* Therefore, as previously noted, *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 recognizes that the applicant's children will endure hardship as a result of separation from the applicant. However, their situation, if they remain in the United States, is typical of individuals separated as a result of removal and does not rise to the level of extreme hardship.

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(a)(2)(A)(i)(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.