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U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

Office: NEWARK, NEW JERSEY

Date: SEP 04

IN RE:

[REDACTED]

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

ON BEHALF OF PETITIONER:

[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Liberia 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 (Theft by Deception). The applicant was also found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure an immigration benefit by fraud or willful misrepresentation of a material fact. The applicant is the husband of a Lawful Permanent Resident and the son of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to sections 212(h) and 212(i) of the Act, 8 U.S.C. §§ 1182(h) and 1182(i), in order to remain in the United States with his wife, mother, and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the District Director*, dated February 27, 2006.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (CIS) erred in concluding that the applicant's wife and other family members would not suffer extreme hardship if the applicant is removed from the United States. *See Notice of Appeal to the AAO (Form I-290B)* dated March 21, 2006. Specifically, Counsel states that the applicant's wife and children would suffer extreme hardship if they relocated to Liberia with the applicant because of "unstable and unsafe conditions" there. *See Brief in Support of Appeal* at 2. Counsel further states that the applicant's wife and children would suffer extreme emotional hardship due to separation from the applicant as well as being "plagued by constant concern for the welfare" of the applicant if they remained in the United States without him. *Id.* Counsel additionally asserts that CIS erred in improperly dismissing evidence concerning conditions in Liberia and a psychological evaluation indicating that the applicant's wife suffers from anxiety and depression. *Brief* at 2-3. The applicant's wife further states that she and their family would suffer financial hardship if they relocated to Liberia or if they remained in the United States because she would not be able to pay the family's expenses without the applicant's income. *Affidavit of [REDACTED]* dated June 30, 2005. In support of the waiver application counsel submitted affidavits from the applicant and his wife, a psychological evaluation of the applicant's wife and children, reports on conditions in Liberia, medical records for the applicant's daughter and mother-in-law, copies of birth certificates for the applicant's children, and a copy of the applicant's marriage certificate. The entire record was reviewed and considered in arriving at a decision on the appeal.

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 (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:

(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 applicant was convicted of Third Degree Theft by failure to make required disposition of property received, a crime involving moral turpitude, on September 18, 1995 in Essex County, New Jersey, for conduct that took place from January 1, 1992 to September 15, 1992. *See Police Criminal Complaint Follow-up Report* dated October 7, 1992. The AAO notes that although the decision of the District Director and a letter from the applicant's probation officer dated June 3, 2005 state that he was convicted of Fourth Degree Theft by Deception, the Notice of Disposition from the Essex County Court, Criminal Division, states that the application was convicted of Third Degree Theft on September 18, 1995. This document lists the offense as "Theft by Deception" pursuant to New Jersey Statutes Annotated (N.J.S.A) § 2C:20-4, but contains the notation, "Please Amend 2C:20-9," which is also dated September 18, 1995. N.J.S.A. § 2C:20-9 states in pertinent part,

2C:20-9. Theft by failure to make required disposition of property received --

A person who purposely obtains or retains property upon agreement or subject to a known legal obligation to make specified payment or other disposition, whether from such property or its proceeds or from his own property to be reserved in equivalent amount, is guilty of theft if he deals with the property obtained as his own and fails to make the required payment or disposition. The foregoing applies notwithstanding that it may be impossible to identify particular property as belonging to the victim at the time of the actor's failure to make the required payment or disposition. . . . The fact that any payment or other disposition was made with a subsequently dishonored negotiable instrument shall constitute prima facie evidence of the actor's failure to make the required payment or disposition, and the trier of fact may draw a permissive inference there from that the actor did not intend to make the

required payment or other disposition.

This conviction renders the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The crime involving moral turpitude for which the applicant was found inadmissible occurred more than 15 years prior to the applicant's application for admission. Since more than 15 years have passed since the criminal activity for which he was convicted, the applicant is now statutorily eligible for a waiver pursuant to section 212(h)(1)(A) of the Act. However, the applicant also requires a waiver of inadmissibility under section 212(i) of the Act for misrepresentation of a material fact. As a waiver under section 212(i) has more stringent requirements than those under section 212(h)(1)(A), the applicant's eligibility under section 212(i) will be discussed first.

The applicant was found inadmissible under section 212(a)(6)(C)(i) of the Act for failing to disclose this arrest and conviction when he applied for Temporary Protected Status (TPS) in 1998 and for an employment authorization document under the Deferred Enforced Departure (DED) program in 1999. *See Form I-821 (Application for Temporary Protected Status)* dated December 3, 1998 and *Form I-765D (Liberian DED Supplement to Form I-765)* dated November 5, 1999. On both of these applications the applicant stated that he had been arrested in 1997 and he submitted court records indicating that the charges had been dismissed. *See Transcript of Docket from Passaic County, New Jersey* dated November 30, 1998. He did not disclose his arrest and conviction for theft on either of these applications.

An individual must be admissible as an immigrant to be eligible for TPS and is ineligible for TPS if he has been convicted of one felony. INA §§ 244(c)(1)(A)(iii) and (c)(2)(B), 8 U.S.C. §§ 1254a(c)(1)(A)(iii) and (c)(2)(B). Further, individuals from Liberia were excluded from eligibility for DED if they were ineligible for TPS pursuant to reasons provided in section 244(c)(2)(B) of the Act. *See Memorandum on Measures Regarding Certain Liberians in the United States* from President Clinton to the Attorney General, dated September 28, 2000. New Jersey law does not designate crimes as felonies or misdemeanors, but rather designates all offenses punishable by more than six months in prison as "crimes" ranging from the first to fourth degree. Offenses with a maximum prison sentence of six months or less are designated as "disorderly person offenses". *See* N.J.S.A. § 2C:1-4. Because New Jersey law does not specify whether the crime the applicant was convicted of constitutes a felony,¹ the federal definition will be applied to determine whether the crime is a felony. *See U.S. v. Thomas*, 2 F.3d 79 (4th Cir. 1993) (holding that a New Jersey crime in the fourth degree was classified properly as a felony for purposes of a federal sentencing enhancement based on the federal definition). Pursuant to N.J.S.A. § 2C:43-6(3), the maximum sentence for a crime in the third degree is five years, and the conviction therefore constitutes a felony pursuant to 18 U.S.C. § 3559, which defines "felony" as an offense that is not otherwise classified where the maximum term of imprisonment authorized is more than one year. The concealment of his conviction for Theft in the Third Degree constitutes a material misrepresentation because the conviction rendered the applicant inadmissible as an immigrant and

¹ Some provisions of the New Jersey Code equate a crime in the third degree, also considered a "high misdemeanor," with a common law felony. *See* N.J.S.A. §§ 2C:43-1, 2A:155-2, and 2C:1-4(d). *See also State v. Doyle*, 42 N.J. 334 (1964) (holding that any New Jersey misdemeanor offense punishable by more than one year in prison would be viewed as a common-law felony for purposes of justifying an arrest without warrant).

constituted a felony, and therefore also rendered the applicant ineligible for TPS and DED. The applicant sought to obtain the immigration benefit of TPS and an employment authorization document under the DED program through the willful failure to disclose a material fact, and he is therefore inadmissible under section 212(a)(6)(C)(1) of the Act and requires a waiver pursuant to section 212(i) of the Act.

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

(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:

- (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 [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.

The AAO notes that the record contains several references to the hardship that the applicant's children and mother-in-law would suffer if he were to relocate to Liberia. Section 212(i) of the Act provides that a waiver of 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. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse and mother are the only qualifying relatives, and hardship to the applicant's children and mother-in-law will not be separately considered, except as it may affect the applicant's spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 (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 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.

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, 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 addition, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. In *Hassan v. INS*, *supra*, the court further held 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. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court additionally 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.

The record reflects that the applicant is a forty-nine year-old native and citizen of Liberia who entered the United States on September 1, 1984 as a visitor for pleasure. On December 3, 1998, the applicant submitted an Application for Temporary Protected Status (TPS) (Form I-821). On that form the applicant indicated that he had been arrested once in 1997 for assault and the charges were dismissed. On November 10, 1999, the applicant submitted Liberian DED Supplement to Form I-765 (Form I-765D) and also indicated that he had been arrested only once, on January 6, 1997 in Orange, New Jersey, and that the charges were dismissed. The applicant later applied for adjustment of status and, when requested, submitted an arrest report and court disposition relating to his 1995 conviction for theft in the third degree.

The record further reflects that the applicant’s wife is a forty-five year-old native and citizen of Liberia and Lawful Permanent Resident, and his mother is a sixty-eight year-old native of Liberia and citizen of the United States. The applicant and his wife reside together in North Plainfield, New Jersey with their four U.S. Citizen children.

Counsel states that the family would suffer hardship in Liberia due to unstable and unsafe conditions there, and would also suffer hardship if they remained in the United States because they would be “plagued by constant concern for the welfare of [REDACTED]” *Brief at 2*. Counsel further states that the designation of Liberia for Temporary Protected States indicates that conditions there are “treacherous” and are alone sufficient to establish extreme hardship to the applicant’s family members. *Brief at 3*. In support of these assertions, counsel submitted the U.S. State Department’s *2004 Country Report on Human Rights Practices for Liberia*, which states,

During the year, the country’s transition to democracy was hindered by widespread corruption, a severely damaged infrastructure, and continuing instability that delayed the return of thousands of refugees and internally displaced persons (IDPs). . . . The country . . . was very poor with a market-based economy ravaged by the civil war. . . . An estimated 80 percent of the population lived on less than \$1 per day, and the country had an unemployment rate of at least 70 percent.

In his affidavit the applicant states that if his waiver application is not approved, his children would suffer because they have never left the United States and do not want to lose the opportunity to attend college. *Affidavit of* [REDACTED] dated June 30, 2005, at Paragraph 14. He additionally states that his older children have become concerned about his immigration status, and his wife “has noticed them being depressed and pensive.” *Id.* the applicant claims that if his whole family relocated to Liberia, it will be “a chaotic situation in regard to the education” of his children, and claims that he and his wife will not be able to find jobs with a “decent salary” and they would not have a place to live. *Affidavit of* [REDACTED] at Paragraph 14.

Returning to Liberia poses numerous hardships for the applicant’s wife, including the need to secure new employment, adjustment back to life in Liberia after over twenty years in the United States, and the financial burden of moving and relinquishing her current employment. It is noted that no evidence was submitted with the appeal to document current political or economic conditions in Liberia and support the assertions concerning these conditions made by the applicant and his wife in their affidavits. The AAO notes, however, that although the Temporary Protected Status (TPS) designation for Liberia was terminated as of October 1, 2007 due to the end of the civil war and improvement in security conditions there, President Bush directed the Department of Homeland Security to extend DED to qualified Liberians until March 31, 2009. The decision to authorize DED for Liberian nationals was made because although the civil conflict ended in 2003 and conditions have improved, there are “political and economic conditions in the country that justify deferring the enforced departure for 18 months of those individuals who have expiring TPS status.” *See* U.S. Department of Homeland Security, *Fact Sheet: Liberians Provided Deferred Enforced Departure (DED)*, September 12, 2007. In a memorandum to the Secretary of Homeland Security, President Bush stated that Liberia “is struggling to implement reconstruction and economic stabilization programs after years of civil war.” *See* Voice of America, “*President Bush Offers Liberian Immigrants Relief from Deportation*,” September 14, 2007 (<http://www.voanews.com/english/archive/2007-09/2007-09-14-voa6.cfm?CFID=28721565&CFTOKEN=92183558>).

When considered in aggregate and in light of current conditions in Liberia, the factors of hardship to the applicant’s wife, should she relocate to Liberia, cumulatively constitute extreme hardship.

In his affidavit the applicant states that he and his wife own a home and have a monthly mortgage payment of \$1918.66, and further states that his wife works as a nurse’s assistant and he just started working as an air conditioner technician. *Affidavit of* [REDACTED] at Paragraphs 8-9. He further states that if his family remains in the United States without him, his wife “will not be able to meet all of our major financial obligations in the United States. This will have a big psychological impact on our children.” *Affidavit of* [REDACTED] at Paragraph 14. The applicant’s wife states,

I will not be able to live without my husband. I LOVE HIM VERY MUCH! I have an extraordinary job with benefits. We both can comfortably support our family financially. Without my husband, I will not be able to handle all the expenses of our home. It will be very difficult for me to continue paying the mortgage. We will have to move to a small apartment and lose all the comforts that we have now. *Affidavit of* [REDACTED], dated June 30, 2005, at Paragraph 6.

The record contains no documentation of the employment or income of the applicant or his wife, and contains no evidence concerning the mortgage on their home or any other financial obligations or expenses. 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)). There is insufficient evidence on the record to establish that the applicant's removal would result in extreme economic hardship to his wife if she remained in the United States. Further, even if the loss of the applicant's income would have a negative impact on his wife's financial situation, 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.

A report prepared by [REDACTED], a psychologist who examined the applicant's wife and children, states that she suffers from "Adjustment Disorder with Mixed Anxiety and Depressed Mood as a result of her fear that her husband, [REDACTED], will have to leave the United States and return to Liberia." *Affidavit of [REDACTED]*, dated June 20, 2005. The findings in this report have been taken into consideration. It appears from the evidence that the applicant's wife is suffering from anxiety and depression because she fears she might be separated from her husband. [REDACTED] states that if she were separated from the applicant, the applicant's wife's symptoms, which include sleep disturbance, poor appetite, and crying spells, "would become seriously exacerbated." *Affidavit of [REDACTED]* at 5. Although the input of any mental health professional is respected and valuable, the AAO notes that the report from [REDACTED] is based on a single interview rather than an ongoing relationship between a mental health professional and the applicant's wife. Further, the report does not document any history of treatment for the anxiety and depression suffered by the applicant's spouse. The conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration resulting from an established relationship with a psychologist. This renders the psychologist's findings speculative and diminishes the evaluation's value to a determination of extreme hardship.

The evidence does not establish that any emotional harm the applicant's wife is experiencing is more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's deportation or exclusion. Although the depth of her concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. A waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus familial and emotional bonds, exists.

Based on the evidence on the record, the emotional and financial hardship that the applicant's wife would suffer if she remained in the United States appears to be the type of hardship that family members would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96

F.3d 390 (9th Cir. 1996) (defining “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship). Although the applicant’s mother is also a qualifying relative, the applicant did not submit any evidence or make any specific claim concerning hardship she would suffer if the applicant were removed from the United States. Therefore, the AAO cannot make a determination of whether the applicant’s mother would suffer extreme hardship if he were removed from the United States.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his Lawful Permanent Resident wife or U.S. Citizen mother as required under section 212(i) of the Act. As the applicant has been found ineligible for a waiver under section 212(i) of the Act, no purpose would be served in discussing a waiver under section 212(h) of the Act.

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. 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.