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FILE:

Office: KINGSTON, JAMAICA

Date:

APR 06 2009

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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom

Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Kingston, Jamaica. 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 and citizen of Jamaica 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 (retail theft and terroristic threats). The applicant has a U.S. citizen spouse and two U.S. citizen children, and he seeks a waiver of inadmissibility in order to reside with his family in the United States.

The officer-in-charge found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Officer-in-Charge's Decision*, at 2, dated September 1, 2006.

On appeal, counsel asserts that a denial of the waiver would result in extreme hardship to the applicant's spouse and children. *Form I-290B*, dated September 29, 2006.

The record includes, but is not limited to, counsel's brief, a psychological evaluation, and statements from the applicant and his spouse. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that, on March 28, 2008, the applicant claimed to be a lawful permanent resident of the United States before an Immigration and Customs Enforcement Agent who was attempting to determine his immigration status. As the applicant sought to remain in the United States (which is a benefit under the Act) through willfully misrepresenting a material fact, he is inadmissible under section 212(a)(6)(C)(i) of the Act.¹

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 applicant was convicted on June 12, 1995 of retail theft (Section 3929 of the Pennsylvania Criminal Code) and terroristic threats (Section 2706 of the Pennsylvania Criminal Code). As the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for his misrepresentation, the AAO will not address whether his criminal convictions involve moral turpitude and whether he is, therefore, also inadmissible under section 212(a)(2)(A)(i)(I) of the Act, as a finding of extreme hardship under section 212(i) of the Act would also result in approval of a section 212(h) waiver..

- (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 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 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.

The AAO notes that section 212(i) 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. The applicant's spouse is the only qualifying relative under section 212(i) of the Act. 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 must be established whether the applicant's spouse relocates to Jamaica or resides in the United States, as there is no requirement that she reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event of relocation to Jamaica. Counsel states that the family would not be able to economically survive in Jamaica. *Brief in Support of Appeal*, at 4, dated October 29, 2006. The psychologist who evaluated the applicant and her daughter states that the applicant has been unable to obtain sufficient income in Jamaica to support himself and depends on his spouse to send him money. *Psychological Evaluation*, at 7, dated October 25, 2006. The psychologist further states that the unemployment rates are three times higher than in the United States and the applicant's spouse would be unable to earn a comparable rate there. *Id.* The record, however, does not include documentary evidence, e.g. published reports on the Jamaican economy, to support the claims made by counsel and the psychologist regarding the Jamaican economy. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The 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 psychologist also finds that relocation to Jamaica would result in hardship to the applicant's already-troubled daughter who would be exposed to even more drugs and would potentially face academic and legal difficulties. *Psychological Evaluation*, at 7. The AAO also notes that the applicant's daughter has lived her entire life in the United States and that the Board of Immigration Appeals (BIA) has found that a fifteen-year-old child who lived her entire life in the United States, was completely integrated into the American lifestyle and was not fluent in Chinese would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). While the AAO finds *Matter of Kao and Lin* to be persuasive in this case, the applicant's daughter is not a qualifying relative in this proceeding and the record does not provide evidence of how her extreme hardship upon relocation would affect the applicant's spouse, who is the qualifying relative in this case. Having reviewed the record, the AAO finds that insufficient evidence has been provided to establish that the applicant's spouse would suffer extreme hardship in the event of relocation to Jamaica.

The second part of the analysis requires the applicant to establish extreme hardship in the event that the applicant's spouse resides in the United States. The psychologist states that the applicant's spouse has had psychological issues that have played a role in her life, she has been isolated from her parents and siblings who have been judgmental and conditional in their love, she is frustrated with her daughter, she has no real friends, she sometimes misses the "big picture" and important issues, and her intense work schedule seems, in part, to protect her from painful emotions. *Psychological Evaluation*, at 4-5. The psychologist recommended that the applicant's spouse and daughter be placed in psychotherapy to resolve the issues between them. *Id.* at 6. The applicant's spouse states that the separation from the applicant has hit her daughter the hardest, her son misses the applicant and asks for him constantly, and the strain of separation has caused anxiety for him. *Applicant's Spouse's Statement*, dated October 24, 2006.

Counsel states that the applicant's relationship with his spouse began 15 years ago, they have been married since 2001, they have two children together, she is forced to work 80-90 hours per week to support her family and to buy airline tickets to visit the applicant, she does not have time to spend with her children, she has limited social interactions, her daughter is unable to live with her as the area she lives in is unsafe and has bad influences, and she is having difficulty disciplining her daughter without the applicant. *Brief in Support of Appeal*, at 1-2.

Counsel states that the applicant's daughter needs the daily support and discipline from her father, she is at great risk of becoming involved in harmful behavior, the applicant appears to be the only one able to control her behavior, and the applicant's spouse would not have to work so much and could spend time with her daughter if the applicant joined her. *Id.* at 2. Counsel states that the applicant's daughter is residing with her grandparents because her mother is unable to care for her due to the dangerous area she lives in and her need to work so many hours per week. *Id.* at 3. The applicant's daughter was evaluated by a psychologist who states:

...when the [the applicant's daughter] became an adolescent, her mother became concerned because [the applicant's daughter] seemed increasingly enamored by the "street" and hip-hop culture...[the applicant's daughter] also began to lie to

her, telling her she was going to the library, for example, and then going someplace else. In addition, her grades dropped precipitously to the point that she was receiving grades of "D" and "F"... [the applicant's daughter] had a good relationship with her father and he served an important role in terms of fighting and disciplining her. [The applicant's mother] noticed that after [the applicant's daughter] spent some time with her father in Jamaica, her behavior improved when she returned home. However, this behavioral change did not last because, [the applicant's spouse] surmised, [the applicant's daughter] knew that her father was too far away to really set limits for her...[the applicant's daughter] stands at a crossroad: She is a bright and caring individual who will, hopefully, go on to be a competent, educated, and successful adult...she is demonstrating a number of significant risk factors that could derail her success: She has been sexually active since the age of 12 or 13 and is at a high risk of pregnancy...The attempts by [the applicant's daughter's] mother and grandparents to simply restrict her activities are not working; as a sole strategy, this is more likely to trigger more serious rebelliousness and oppositional behavior...having a father in a child's life greatly increases the odds that the child will perform well academically, complete his or her education, forgo early pregnancy, and avoid legal problems. Having [the applicant's daughter] living with both parents would, in my opinion, greatly enhance the possibility that [the applicant's daughter] will make the right choices. This is especially true given her mother's compulsive workaholism and the fact that [the applicant's daughter] appears to take her father's guidance seriously...

Psychological Evaluation, at 5-7.

Although the applicant's spouse may encounter difficulty without the applicant, the psychologist does not conclude that the spouse is experiencing depression or has any other kind of emotional problem as a result of her separation from her spouse. The record does not establish that the applicant's spouse's problematic relationship with her daughter is linked to the applicant's inadmissibility and the evaluation does not reflect that it has resulted in any observed emotional hardship to the applicant's spouse. The AAO notes that the evaluation of the applicant's spouse is based on a single interview and there is no finding that she is suffering emotional hardship as a result of separation from the applicant or that her responsibilities in his absence are causing her emotional distress. As such, the AAO finds that the applicant's spouse would not suffer extreme hardship if she remained in the United States without the applicant.

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). 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 sections 212(i) and (h) 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.