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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: MIAMI, FLORIDA

Date: APR 14 2009

IN RE:

Applicant:

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

The AAO notes that on appeal, the applicant, through counsel, requested 30 days to submit a brief and/or evidence to the AAO. *Form I-290B*, filed December 8, 2006. The record contains no evidence that a brief or additional evidence was filed within 30-days; therefore, the record is considered complete.

The applicant is a native and citizen of Haiti who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a crime relating to a controlled substance. The record indicates that the applicant's mother is a lawful permanent resident of the United States and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his lawful permanent resident mother and sisters.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on his qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 9, 2006.

On appeal, the applicant, through counsel, asserts that the District Director "did not balance the many equities or positive factors on behalf of [the applicant]. A careful review of the record will show that [the applicant's] Waiver should have been granted." *Form I-290B, supra*.

The record includes, but is not limited to, letters from the applicant and his mother; and the criminal court dispositions for the applicant's arrests and convictions. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on November 17, 2005, the applicant was convicted of possession of cannabis/20 grams or less and reckless driving; however, adjudication on these convictions was withheld, but the applicant was ordered to pay court costs and fees. The AAO notes that even though adjudication was withheld on the applicant's possession conviction, he has still been convicted of a crime for immigration purposes. Section 101(a)(48) of the Act states that when an alien enters a plea of guilty, or is found guilty, and a formal judgment of guilt is entered by a court, where a judge has ordered some form of punishment, penalty, or restraint on the alien's liberty, there has been a conviction for immigration purposes. Based on the County Court Disposition Order, the applicant was ordered to pay court costs and fees, and the imposition of costs and surcharges in the criminal sentencing context constitutes a form of punishment. *See Matter of Cabrera*, 24 I&N Dec. 459 (BIA 2008). The applicant is clearly inadmissible under section 212(a)(2)(A)(i)(II) of the Act. Additionally, counsel has not disputed that the applicant was convicted of a crime relating to a controlled substance or that the applicant is inadmissible under section 212(a)(2)(A) of the Act.

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

(A) Conviction of certain crimes. -

(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, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)),

is inadmissible.

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

The Attorney General [Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of...*subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana* if – (emphasis added.)

(1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that –

- (i) ...the 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 [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...

The record reflects that on January 14, 1999, the applicant's lawful permanent resident mother filed a Form I-130 on behalf of the applicant. On October 25, 2000, the applicant's Form I-130 was approved. On November 12, 2002, the applicant entered the United States on a V-2 nonimmigrant visa. On April 29, 2004, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On September 20, 2004, the applicant was convicted of resisting/obstructing justice without violence; however, adjudication on this conviction was withheld, but the applicant was ordered to complete community service and pay court costs and fees. On September 25, 2005, the applicant was arrested for reckless driving, possession of marijuana under 20 grams, running a stop sign, running a red light, and illegal window tint. On November 17, 2005, the applicant was convicted of possession of cannabis/20 grams or less and reckless driving; however, adjudication on these convictions were withheld, but the applicant was ordered to pay court costs and fees. On January 5, 2006, the applicant filed a Form I-601. On November 9, 2006, the District Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relative.

The applicant is seeking a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act. A waiver under section 212(h) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent or child of the applicant. Hardship the alien himself experiences upon removal is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's lawful permanent resident mother. 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, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include 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.

The applicant's mother states if the applicant is removed to Haiti, he "will not make it by himself, he desperately needs the help of [their] family so that he can stay out of trouble." *Letter from* [REDACTED], dated February 8, 2006. The AAO notes that the applicant's mother made no claim that she could not join the applicant in Haiti, and it has not been established that she has no transferable skills that would aid her in obtaining a job in Haiti. The applicant states he made mistakes when he came to the United States and he "was under the influence of bad company, and extreme peer pressure." *Letter from* [REDACTED], dated January 3, 2006. The applicant claims he

has changed and he wants to become a productive member of society. *See id*; *see also letter from* [REDACTED], *supra*. The AAO notes that since the applicant filed his waiver, he has been arrested on at least eight (8) separate occasions, with the last arrest being as recent as December 16, 2008; therefore, the applicant has not demonstrated rehabilitation. The applicant states all of his family is in Florida; however, the AAO notes that the applicant's father resides in Haiti. *See Biographic Information* (Form G-325A), dated April 27, 2004. Additionally, as stated above, hardship the applicant experiences upon removal is irrelevant to section 212(h) waiver proceedings. The AAO notes that the applicant's mother is a native of Haiti, she spent her formative years in Haiti, she speaks the native language, and it has not been established that she has no family ties to Haiti. The AAO finds that the applicant failed to establish that his mother would suffer extreme hardship if she accompanies him to Haiti.

In addition, counsel does not establish extreme hardship to the applicant's mother if she remains in the United States, maintaining her employment. As a lawful permanent resident of the United States, the applicant's mother is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The AAO notes that there was no documentation submitted that the applicant provides any financial assistance to his mother. Additionally, beyond generalized assertions regarding country conditions in Haiti, the record fails to demonstrate that the applicant cannot obtain employment in Haiti, or that he will be unable to contribute to his mother's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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 mother 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 section 212(a)(2)(A) 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.