



U.S. Citizenship
and Immigration
Services

H2

[Redacted]

FILE:

[Redacted]

Office: PHILADELPHIA, PA

Date: DEC 03 2009

IN RE:

[Redacted]

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:

[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.

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).

A handwritten signature in cursive script, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Trinidad and Tobago 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 controlled substance violation. The applicant is the son of a naturalized U.S. citizen, and 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 father.

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 Director*, undated.

On appeal, counsel contends that the applicant has established that his father would suffer extreme hardship as necessary for a waiver under 212(h) of the Act.¹ *Form I-290B*.

In support of the waiver, counsel submits a brief. The record also includes, but is not limited to, a statement from the applicant's father; criminal records for the applicant; a statement from the applicant's friend; Social Security Administration decisions for the applicant's friend; medical records for the applicant's friend; an employment letter for the applicant; earnings statements for the applicant; an earnings statement for the applicant's father; an employment letter for the applicant's father; tax returns for the applicant's father; and a statement from the applicant. The entire record was considered in rendering 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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.
 - (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.

¹ Counsel also states that, in filing the instant waiver application, the applicant relied on advice provided by his employer/family friend who was unaware of statutory requirements. Counsel, therefore, asserts that the applicant's case should be treated as though the applicant had been found to have had ineffective assistance of counsel. As counsel does not cite any legal precedent for his suggestion, it will not be considered by the AAO.

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), (B), (D), and (E) of subsection (a)(2) and 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—

(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.

The applicant has the following criminal history. On August 21, 2003 he was convicted of possession of marijuana (2.6 grams) in Delaware for which he was placed on probation for three years. *Conditions of Supervision, Office of Probation and Parole*, dated August 22, 2003; *Court records, Exhibit B, Justice of the Peace Court, State of Delaware*, dated August 19, 2003. On August 25, 2003, the applicant was convicted of unauthorized use of a vehicle for which he was placed on probation for six months and division lands for which he was placed on probation for six months. *Conditions of Supervision, Office of Probation and Parole*, dated August 25, 2003. As the applicant was convicted of possession of marijuana of 30 grams or less, the AAO finds that the applicant has been convicted of a controlled substance violation and is eligible for a waiver under section 212(h) of the Act.

A section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A) 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. The plain language of the statute indicates that hardship that the applicant or other family members would experience as a result of his inadmissibility is not directly relevant to the determination as to whether he is eligible for a waiver. The only directly relevant hardship in the present case is hardship suffered by the applicant's father if the applicant is found to be inadmissible. Hardship to a non-qualifying relative will be considered to the extent that it affects the applicant's father. If 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a 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 qualifying relative must be established whether he resides in Trinidad and Tobago or the United States, as he is not required to reside outside 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.

If the applicant's father travels with the applicant to Trinidad and Tobago, the applicant needs to establish that his father will suffer extreme hardship. The applicant's father was born in Trinidad and Tobago. *Naturalization Certificate for the applicant's father*. His two brothers, six sisters and parents live in Trinidad. *Statement from the applicant's father*, dated September 28, 2005. The applicant's father states he is a severe diabetic. *Id.* He notes that he takes medication and is under the constant supervision of a physician. *Id.* He also notes that he underwent major intestinal surgery and, at times, struggles with complications from the surgery. *Id.* While the AAO acknowledges these statements, it notes that the record fails to include documentation from a licensed healthcare professional regarding the health problems of the applicant's father. Going on record without supporting documentary evidence will not meet the burden of proof in this proceeding. *See 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)). The record also fails to include documentation, such as published country conditions reports, regarding the availability and adequacy of medical care in Trinidad and Tobago as it relates to the applicant's father. The applicant's father notes that his wife has chronic kidney disease for which she is hospitalized each month. *Statement from the applicant's father*, dated September 28, 2005. The record again fails to include documentation from a licensed healthcare professional regarding the health conditions of the applicant's father's wife. Further, it does not address whether the applicant's father would be affected in any way by moving to Trinidad and Tobago and leaving his wife. The record also fails to include published country conditions reports documenting the economic situation in Trinidad and Tobago and whether employment would be available. When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to his father if he were to reside in Trinidad and Tobago.

If the applicant's father resides in the United States, the applicant needs to establish that his father will suffer extreme hardship. The applicant's father was born in Trinidad and Tobago. *Naturalization Certificate for the applicant's father*. His two brothers, six sisters and parents live in Trinidad. *Statement from the applicant's father*, dated September 28, 2005. As previously noted, the applicant's father states he is a severe diabetic. *Id.* He notes that he takes medication and is under the constant supervision of a physician. *Id.* He also notes that he underwent major intestinal surgery and, at times, struggles with complications from that surgery. *Id.* The applicant's father also states that his wife has chronic kidney disease for which she is hospitalized each month. *Id.* The applicant's father notes that the applicant is extremely helpful and supportive of his needs, cooking

special meals for him. *Id.* The applicant also assists in the support of the applicant's father's wife. *Id.* While the AAO acknowledges these statements, the record, as previously discussed, fails to include documentation from a licensed healthcare professional regarding the health problems of the applicant's father and his wife. Going on record without supporting documentary evidence will not meet the burden of proof in this proceeding. *Matter of Soffici, supra.* The record also fails to demonstrate that the applicant's three brothers who, the applicant's father claims, live in the United States would be unable or unwilling to assist in the care of their father and his wife.

The applicant's father notes that he would be devastated if his son had to permanently leave the United States. *Statement from the applicant's father, dated September 28, 2005.* The AAO acknowledges the difficulties that would be faced by the applicant's father as a result of his son's inadmissibility. However, 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's father will endure hardship as a result of his separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's father would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his father if he were to reside in 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 an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

ORDER: The appeal is dismissed.