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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: ST. PAUL, MINNESOTA

Date: **FEB 03 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 PETITIONER:



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 Acting District Director, St. Paul, Minnesota, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Kenya who has resided in the United States since August 11, 1995, when he was admitted as an F1 student. He was found to be inadmissible 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 (5th degree Criminal Sexual Conduct). The applicant is married to a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his wife and stepchildren.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the Acting District Director* dated June 8, 2004.

On appeal, counsel states that Citizenship and Immigration Services (“USCIS”) erred in failing to consider all of the factors that constitute extreme hardship for the applicant’s wife and stepchildren. Specifically, counsel states that USCIS failed to consider documentary evidence establishing that the applicant’s wife would suffer extreme hardship if she relocated to Kenya because she would be separated from her two older children, whom she cannot remove from the United States; would suffer hardship due to economic conditions and cultural differences in Kenya; and would face danger to herself and her younger children because of terrorist threats and ongoing safety and security concerns in Kenya. *See Brief in Support of Appeal* at 2. Counsel further asserts that the applicant’s wife and stepchildren would suffer extreme hardship if they remained in the United States and were separated from the applicant because of the length of the marriage and the applicant’s role as a father-figure for the children and the economic hardship resulting from loss of the applicant’s income. *Brief* at 3. Counsel further states that the applicant has fully rehabilitated and USCIS erred in determining that he has not demonstrated any rehabilitation. Documentation submitted with the waiver application and appeal includes the following: Affidavits prepared by the applicant’s wife and other relatives and friends, documentation concerning the child support obligations of the applicant’s wife for her two older children, a copy of the mortgage on the home owned by the applicant and his wife, and articles on conditions in Kenya. 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]his 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 Criminal Sexual Conduct in the 5th Degree on June 16, 2000 in Hennepin County, Minnesota, and was sentenced to 364 days imprisonment. The offense for which the applicant was convicted took place on November 23, 1999. Since less than fifteen years has passed since the conduct for which the applicant was convicted, he is not eligible for a waiver under section 212(h)(1)(A) of the Act, but may seek a waiver under section 212(h)(1)(B) of the Act.

Section 212(h) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(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. 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.

In the present case, the record reflects that the applicant is a thirty-five year-old native and citizen of Kenya who has resided in the United States since August 11, 1995, when he was admitted as an F-1 student. The applicant married his wife, a forty-four year-old native and citizen of the United States, on July 12, 1997. They reside in Brooklyn Center, Minnesota with the applicant’s two younger stepchildren.

Counsel asserts that the applicant’s wife and stepchildren would suffer extreme hardship if they relocated to Kenya due to economic conditions and cultural differences, security concerns including the threat of terrorism, and the emotional harm caused by separation from the applicant’s wife’s older children, who are in the custody of their father. As evidence of this hardship, counsel submitted information on economic, social, and political conditions in Kenya, a declaration from the applicant’s wife, and documentation concerning the custody and child support for the applicant’s two older stepchildren. The documentation submitted indicates that Kenya’s economy is dominated by the agricultural sector, which provided about 70% of total employment, and its government’s human rights record was poor, with security forces committing serious human rights abuses. *See U.S. Department of State, Country Reports on Human Rights Practices for 2000 – Kenya* (submitted as part of Exhibit B with the I-601 application). Documentation on the record also indicates that violence against women is a serious problem and that women in Kenya “experience a wide range of discriminatory practices, limiting their political and economic rights and relegating them to second class citizenship.” *Id.* A more recent report on widespread violence that took place after Kenya’s December 2007 presidential elections states,

The scale and speed of the violence that engulfed Kenya following the controversial presidential election of December 27, 2007 shocked both Kenyans and the world at large. Two months of bloodshed left over 1,000 dead and up to 500,000 internally displaced persons in a country viewed as a bastion of economic and political stability in a volatile region.

The ethnic divisions laid bare in the aftermath of the elections have roots that run much deeper than the presidential poll. No Kenyan government has yet made a good-faith effort to address long simmering grievances over land that have persisted since independence. High-ranking politicians who have been consistently implicated in organizing political violence since the 1990s have never been brought to book and

continue to operate with impunity. Widespread failures of governance are at the core of the explosive anger exposed in the wake of the election fraud.

Human Rights Watch, *Ballots to Bullets -Organized Political Violence and Kenya's Crisis of Governance*, March 16, 2008.

According to her affidavit, the applicant's wife does not speak Swahili, the predominant language in Kenya, and relocation to Kenya would separate her from her two older children, who are in their father's custody. *Affidavit of [REDACTED]* dated November 20, 2001. She further states that she is not certain she could legally take her two youngest children with her to Kenya, and that if she did, they would suffer hardship there due to economic and social conditions and security threats as well as emotional hardship from being separated from their biological fathers. *Affidavit of [REDACTED]* at 4-6. All of the hardships to the applicant's wife and younger stepchildren, including threats to their security and separation from family members in the United States, combined with the difficulty they would have adapting to cultural and economic conditions there, would amount to extreme hardship if they were to relocate to Kenya with the applicant.

Counsel asserts that the applicant's wife and stepchildren would suffer extreme hardship if they remained in the United States, including emotional and psychological hardship as a result of being separated from the applicant and financial hardship due to the loss of his income. In her affidavit, the applicant's wife states,

I do not know what I would do or how I would cope, if [REDACTED] was forced to leave the United States and the children and I remained here. My husband is the man I love, a kind and loving stepfather to my children . . . I cannot begin to imagine life without him. If [REDACTED] were deported to Kenya, my four children would lose their stepfather. Such as separation would cause them extreme hardship. Since [REDACTED] and [REDACTED] live with us, their relationship with [REDACTED] is unusually strong and close. *Affidavit of [REDACTED]* at 15.

Counsel asserts that the applicant's wife and stepchildren would suffer extreme emotional hardship if he is removed from the United States, but there is no evidence on the record concerning any emotional hardship they would suffer, such as evidence concerning their mental health or the potential emotional or psychological effects of the separation. The evidence on the record does not establish that the emotional effects of separation from the applicant would be more serious than the type of hardship a family member would normally suffer when faced with the prospect of a spouse's or parent's removal or exclusion. Although the depth of their distress over the prospect of being separated from the applicant is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal 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 exists.

Counsel additionally asserts that the applicant's wife would suffer economic hardship if the applicant were removed from the United States. The applicant's wife states in her affidavit that she would have financial problems if the applicant were to depart the United States and that without the applicant's income she would have difficulty meeting their monthly financial obligations. *Affidavit of [REDACTED]* at 16. She further states, "Without [REDACTED]'s income, things would be tight, very tight. There would not be money for any extras such as entertainment, a home of our own, my education, my children's education fund, telephone calls to Kenya, or trips to Kenya to see my husband. . . . I would probably lose our town home. I might have to file bankruptcy, and my credit would very likely be ruined." *Id.* at 16-17. No documentation of the family's expenses or recent documentation of the applicant's income was submitted with the waiver application to support the assertion that the applicant's wife and stepchildren would suffer financial hardship if the applicant were removed from the United States. A copy of a security instrument indicating that the applicant and his wife have a mortgage in the amount of \$160,730 was submitted with the appeal, but no copy of the borrower's note was submitted as evidence of the monthly payment. 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 no evidence on the record to support the assertion that the applicant's wife would be unable to support herself and her children if the applicant were removed from the United States. Further, even if loss of the applicant's income would have a negative effect on their financial situation, this would be a common result of deportation. The mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See INS v. Jong Ha Wang, supra.*

The emotional and financial hardship the applicant's wife and stepchildren would suffer if they remain in the United States appears to be the type of hardship that a family member 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).

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. Citizen spouse and stepchildren would suffer extreme hardship if he were removed and they remained in the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

ORDER: The appeal is dismissed.