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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, FL

Date: JUL 01 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 District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal.

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. The applicant's spouse and child are U.S. citizens. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his family.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. *Decision of the District Director*, at 4, dated December 4, 2006.

On appeal, counsel asserts that the "convictions" cited by the district director are not convictions, and that she abused her discretion in denying the application when the applicant's spouse detailed extreme hardship to her and her daughter. *Brief in Support of Appeal*, at 1-2, dated January 30, 2007.

The record includes, but is not limited to, counsel's brief, photographs of the applicant and his spouse, the applicant's spouse's statement and letters from family members. The entire record was reviewed and considered in arriving at a decision on the appeal. The record reflects that the applicant was convicted in Broward County, Florida of possession of cannabis/20 grams or less on March 7, 2002. As such, the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act.¹

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

(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.
- (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... is inadmissible.

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

¹ The applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act and is eligible for a waiver under section 212(h) as he was convicted of a single offense of simple possession of 30 grams or less of marijuana. Accordingly, the AAO will not address whether his theft convictions are for crimes involving moral turpitude as a section 212(h) waiver would apply to those conviction as well.

(h) The Attorney General [now, Secretary, Homeland Security, “Secretary”] may, in his discretion, waive the application of subparagraphs. . . (A)(i)(II) . . . insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if –

....

(1)(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.

The AAO notes that 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.

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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to one of the applicant’s qualifying relatives must be established in the event that they relocate to Jamaica or in the event that they remain in the United States as they are not required to 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 a qualifying relative in the event of relocation to Jamaica. Counsel states that the applicant’s spouse has never lived outside of the United States and questions how she and the applicant are going to survive in a foreign country where they do not know and cannot depend on anybody. *Brief in Support of Appeal*, at 2, dated January 30, 2007. The applicant’s spouse states that if she and the applicant relocated to Jamaica their life would be very hard, she has never been to Jamaica, she would be leaving her siblings and family members behind, her daughter would not have her extended family members in her life, she would have to become accustomed to an entirely different culture and her daughter would grow up in a place that she is not accustomed to. *Applicant’s Spouse’s Statement*, at 2, August 17, 2006. However, the record does not include supporting documentary evidence of emotional, financial, medical or any other types of hardship that would be experienced by the applicant’s spouse or daughter if they moved to Jamaica. Going on record without supporting documentation will not meet the applicant’s 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)). Based on the record, the applicant has not established that a qualifying relative would experience extreme hardship upon relocation to Jamaica.

The second part of the analysis requires the applicant to establish extreme hardship to one of his qualifying relatives in the event that they remain in the United States. The applicant's spouse states that the applicant has guided her to be a great mother, they have been a very happy family, the applicant and their daughter have a very strong bond, their daughter does not go to sleep without the applicant tucking her in, and the applicant was looking forward to attending a vocational school in order to obtain a permanent job and support them, she could not manage the responsibilities on her own, and her and her daughter's lives would be destroyed. *Applicant's Spouse's Statement*, at 1-2. The record does not include supporting documentary evidence of emotional, financial, medical or any other types of hardship that would be suffered by the applicant's spouse or daughter if they remained in the United States without the applicant.

U.S. court decisions have 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. 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.

A review of the documentation in the record finds that the applicant has failed to show that a qualifying relative would suffer hardship that is unusual or beyond that which would normally be expected upon removal.

Having found the applicant statutorily ineligible for relief, no purpose would be served by an analysis of whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(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.