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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS-2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

Office: PHILADELPHIA, PA

Date:

JUL 31 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. section 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, 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, Philadelphia, Pennsylvania. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Niger. He was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I) for having been convicted of a Crime Involving Moral Turpitude (CIMT). The applicant is married to a U.S. citizen and has one U.S. citizen child. 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.

The District Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on December 28, 2006.

On appeal, counsel states the applicant's spouse and child will suffer extreme hardship if the applicant is removed from the United States.

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) of the Act provides, in pertinent part, that:

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . 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 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 the applicant was convicted of First Degree Forgery, Official Code of Georgia Annotated (OCGA), §16-9-1, and Unlawful Possession or Display of Identification or Government Logo or Seal, OCGA § 16-9-4(b)(4), and was sentenced to five years probation on May 31, 2006. In 2004, the applicant was convicted of Larceny, North Carolina General Statutes (N.C.G.S.) § 14-72(a), in Guilford County District Court, Greensboro, North Carolina. Forgery is a CIMT. *Matter of Seda*, 17 I & N Dec. 550 (BIA 1980)(holding that a conviction for forgery in the

state of Georgia is a CIMT). Larceny has long been held to be a CIMT. *Matter of Garcia*, 11 I & N Dec. 521 (BIA 1966). Thus, the applicant has been convicted of at least two CIMTs, and is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I). The applicant does not contest these findings.

A waiver of inadmissibility under section 212(h) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse, parent or child of the applicant. Hardship to the applicant is not directly relevant to the determination of extreme hardship under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen spouse and his infant son are the qualifying relatives in this proceeding. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record of proceeding contains the following relevant evidence: counsel's brief; court records pertaining to the applicant's criminal convictions; statements from the applicant, the applicant's spouse, and friends and family of the applicant and his spouse; employment letters, tax returns and pay stubs for the applicant's spouse; an employment letter for the applicant; medical records for the applicant and his spouse, including statements from Colonial Park Family Practice and Hetrick Center in Harrisburg, Pennsylvania; marriage and birth certificates for the applicant, his spouse and son; country conditions information on Niger from the U.S. State Department Bureau of Consular

Affairs, the CIA World Factbook, the United Nations, the World Health Organization and other sources; and copies of utility and other bills for the applicant's spouse.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

On appeal, counsel asserts that the applicant's spouse would be forced to relocate to Niger with the applicant, and that the applicant's spouse and child would be unable to tolerate the economic, social, cultural and living conditions in Niger, which would result extreme hardship to them. Counsel also states that neither the applicant nor his spouse would be able to receive medical care for their back problems in Niger; the applicant's spouse and child are U.S. citizens; all of the applicant's spouse's family live in the United States; the applicant's spouse does not speak any of the languages of Niger; and she has never visited Niger and is unfamiliar with the social and cultural environment in Niger. Counsel addresses the poor hygienic conditions, rampant disease and lack of infrastructure in Niger, and specifically details diseases that afflict infant children. The record contains documentation that corroborates counsel's description of the environment in Niger. When considered in the aggregate, the AAO finds the preceding factors are sufficient to establish that the applicant's spouse and child would suffer extreme hardship if they were to relocate to Niger with the applicant.

An applicant must also establish that a qualifying relative would suffer extreme hardship in the event he or she is excluded and the qualifying relative remains in the United States. The applicant's spouse asserts that the applicant plays a significant role in caring for their infant child. She states that she has back problems, and that, due to her back problems, she has trouble lifting, carrying and transporting their child, and that the applicant provides her with assistance in these functions. The record also contains numerous letters from family and friends asserting that the applicant feeds, bathes and spends significant time with his child. The AAO notes that the record contains several statements from [REDACTED] Doctor of Chiropractic, who is treating the applicant's spouse for back pain and indicates that she has a "significant lower back condition" – advanced lumbar spine degeneration with an accompanying disc herniation, associated nerve root impingement and stenosis – and needs the applicant to help with household chores and the care of their child. While the AAO acknowledges these statements, it does not find the record to support [REDACTED] description of the back problems experienced by the applicant's spouse. The record does not contain a statement from a medical doctor establishing the back problems that affect the applicant's spouse. Neither does it demonstrate that [REDACTED], as a chiropractor, has the medical authority to provide such a diagnosis.

The AAO also finds the record to include statements from [REDACTED] Physician's Assistant-Certified, who has found the applicant's spouse to be suffering from recurrent, moderate depression and has prescribed medication for depression. Prescriptions in the record establish that the applicant's spouse has been prescribed Lorazepam and Fluoxetine. While the AAO acknowledges the valuable role physician's assistants play in medical practices across the United States, it finds [REDACTED]'s diagnosis of the applicant's spouse to be insufficient proof of her mental/emotional state. The limited statements provided by [REDACTED] do not provide the detail and specificity necessary to distinguish the applicant's spouse's depression from that normally experienced by individuals facing the removal or exclusion of a spouse. Accordingly, they are of limited evidentiary

value in determining extreme hardship. The AAO also notes that the record does not include documentation to establish that [REDACTED], as a physician's assistant, has the medical authority to issue a mental health diagnosis with regard to the applicant's spouse.

The applicant's spouse has also asserted that if the applicant is excluded and she and their child remain in the United States, they will suffer extreme financial hardship. The record contains employment verification for the applicant's spouse, as well as tax documentation for 2002, 2003 and 2004. The record also contains a breakdown of the monthly costs for the applicant's family, and two pay stubs for the applicant. While the documentation provided indicates the applicant's family has significant financial obligations, it does not indicate that they have accrued any substantial debt, or that their income places them below the poverty level for this region. The tax returns submitted indicate that the applicant's spouse earns between \$38,000 and \$40,000 annually, well above the federal poverty guidelines. In addition, although the applicant's spouse has submitted a compilation of her financial obligations, several of the listings are not corroborated by the record and the AAO is unable to determine the accuracy of the listed bills. Based on the income earned by the applicant's spouse and the presence of immediate family who are providing financial assistance, the record does not support the applicant's spouse's claim that her financial hardship would rise to the level of extreme hardship in the applicant's absence. Accordingly, the record does not support a finding that the applicant's spouse or child would face extreme hardship if he is refused admission and they remain in the United States.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* fact, cited above, does not support a finding that the hardships faced by the applicant's spouse rise above those normally experienced by the relatives of excluded aliens. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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 the present case, the record fails to distinguish the hardship that would be experienced by the applicant's spouse and child from that suffered by other individuals whose spouses and fathers have been found to be inadmissible to the United States. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse or child as required under section 212(h) of the Act. 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(h) of the Act, the burden of proving eligibility rests with the applicant. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.