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



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: MANILA

Date: JUN 17 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 black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Manila, Philippines, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Fiji 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 a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to enter the United States and reside with his U.S. citizen wife.

The officer-in-charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer-in-Charge*, dated February 6, 2007.

On appeal, counsel for the applicant contends that the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act, as the record does not show that his conviction constitutes a crime involving moral turpitude. *Brief from Counsel*, dated June 5, 2007. Thus, counsel asserts that the applicant does not require a waiver of inadmissibility. *Id.* Counsel further contends that, should the applicant's conviction be found to be a crime involving moral turpitude, his conviction meets the "petty offense" exception in section 212(a)(2)(A)(ii)(II) of the Act. Counsel asserts that the applicant has shown that his wife will experience extreme hardship if the present waiver application is denied. *Id.*

The record contains a brief and letters from counsel; statements from the applicant, the applicant's wife, the applicant's and his wife's relatives and friends, the applicant's pastor, and the applicant's former teacher; documentation regarding the applicant's wife's mental health; school records for the applicant's wife; tax and employment records for the applicant's wife; a copy of the applicant's wife's birth certificate; a copy of the applicant's marriage certificate; reports on conditions in Fiji and Hindu customs; a copy of the applicant's passport, and; documentation regarding the applicant's conviction for theft in Fiji. The entire record was reviewed and considered in rendering this decision.

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) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

- (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

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

- (h) The Attorney General [now Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) [or] (B) . . . of subsection (a)(2)
 - (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 [now the Secretary of Homeland Security (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 March 1, 2000 the applicant admitted guilt under sections 259(1) and 262(1) of the Fiji Penal Code, Act 17. Documentation associated with his conviction reflects that he stole a generator valued at \$500 and sold it. *Report from Prosecuting Officer*, undated. The court declined to issue an absolute discharge of the offense and ordered that the applicant not commit further offenses within a 12 month period or pay a fine of \$200. *Resident Magistrate Disposition*, dated March 1, 2000. It is noted that Fiji Law Act 17 section 259(1) defines theft as a taking with an intent to "permanently deprive the owner" of the property in question. Fiji Law Act 17 section 262(1) indicates that a conviction under section 259(1) carries a maximum sentence of "imprisonment for five years." There is ample support that a conviction for theft where the perpetrator intends to permanently deprive the owner of the property is a crime involving moral turpitude. *See Matter of M-*, 2 I&N Dec. 686 (BIA 1946); *Matter of Grazley*, 14 I&N Dec. 330, 333 (BIA 1973). Based on the foregoing, the applicant was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude.

On appeal, counsel for the applicant contends that the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act, as the record does not show that his conviction constitutes a crime involving moral turpitude. *Brief from Counsel*, dated June 5, 2007. Counsel indicates that the applicant

only stole a generator as a prank, and that he intended to return the property. Consequently, counsel asserts that the applicant's actions did not constitute a permanent taking, or a crime involving moral turpitude. However, as noted above, the record contains a report from the prosecuting officer that reflects that the applicant sold the generator. The applicant has not submitted any official documentation to contradict the report from the prosecuting officer. Accordingly, the record shows by a preponderance of the evidence that the applicant committed a permanent taking, which is a crime involving moral turpitude.

Counsel contends that the applicant's conviction meets the "petty offense" exception in section 212(a)(2)(A)(ii)(II) of the Act. *Brief from Counsel*. However, Fiji Law Act 17 section 262(1) clearly indicates that a conviction under section 259(1) carries a maximum sentence of "imprisonment for five years." The AAO has considered counsel's assertion that the Fiji theft law is broad and that each act of theft is evaluated based on similar acts to determine an appropriate sentence. It is evident that the court ordered a mild sentence compared to a possible five years of imprisonment. Yet, nothing in Fiji law or the record reflects that the court was legally bound to issue a sentence of one year or less, as required by section 212(a)(2)(A)(ii)(II) of the Act. Thus, the applicant has not established that he meets the requirements for the exception found in section 212(a)(2)(A)(ii)(II) of the Act.

Based on the foregoing, the applicant was properly deemed inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude, and he requires a waiver under section 212(h)(1)(B) of the Act.

Section 212(h)(1)(B) 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. Hardship the applicant experiences due to his inadmissibility is not a basis for a waiver under section 212(h) of the Act; the only relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen wife. *Id.* If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act.

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.

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).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), held that, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and that, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant’s wife would possibly reside in the United States without the applicant. Separation of family will be carefully considered in the assessment of hardship factors in the present case.

On appeal, counsel asserts that the applicant has shown that his wife will experience extreme hardship if the present waiver application is denied. *Brief from Counsel*. Counsel states that the applicant and his wife were married on June 29, 2006 in Suva, Fiji. *Id.* at 2. Counsel provides that the applicant’s wife’s parents are natives of Fiji, but that she was born in the United States. *Id.* Counsel explains that the applicant’s wife adheres to the Hindu faith and that the marriage between the applicant and his wife was arranged under Hindu customs. *Id.* at 3.

Counsel states that the applicant’s wife entered a depressive state when she discovered that the applicant was unable to enter the United States due to inadmissibility. *Id.* at 4. Counsel provides that the applicant’s wife was evaluated by a licensed clinical psychologist who found that her diminished mental and emotional state was occasioned by anxiety and worry of being permanently separated from the applicant. *Id.*

Counsel indicates that Fiji experienced a military coup on December 5, 2006 in which the democratic government was deposed, creating an unsafe environment for U.S. citizens. *Id.* at 5. Counsel asserts that the applicant’s wife would not be secure in Fiji. *Id.*

Counsel notes that the applicant has submitted statements from U.S. citizens and permanent residents who attest to the psychological distress the applicant’s wife is experiencing. *Id.* at 11. Counsel asserts that the officer-in-charge erroneously stated that the applicant’s wife is a native of Fiji, when she was in fact born in the United States and has never resided in Fiji. *Id.* Counsel explains that the applicant’s wife has traveled to Fiji on four occasions, never for more than one month. *Id.* Counsel provides that the applicant’s wife only speaks English, and thus she would experience hardship residing in Fiji due to communication difficulties. *Id.* at 12.

Counsel asserts that the applicant’s wife will experience economic hardship should she remain in California without the applicant, as the cost of residing there is high. *Id.*

Counsel contends that the applicant’s wife has continued to undergo therapy by _____ as well as other medical providers due to her emotional hardship. *Id.* at 13.

The applicant provided a letter from _____ reporting that his wife is suffering from major depression and panic attacks which are debilitating and significantly impact her daily functioning and ability to perform at work and school. *Letter from _____* dated September 7, 2006. _____ stated that the applicant’s wife’s symptoms began after learning that the applicant would be unable to enter the

United States. *Id.* at 1. ██████ posited that, “[w]hile it is likely that with appropriate psychotropic medications and psychotherapy [the applicant’s wife’s] symptoms will become more manageable it would be most beneficial that the cause of her depression was resolved which is the separation from [the applicant.]” *Id.*

The applicant’s wife expressed that she wishes to rejoin her husband, and that she desires his emotional support and companionship. *Statement from the Applicant’s Wife*, dated September 1, 2006. She indicated that they build their relationship to the extent possible through calls, text messages, and emails. *Id.* at 1. The applicant’s wife provided that previously she intended to complete her education and begin her career as a health administrator, but that now her focus is the applicant. *Id.* at 2. She stated that she works in a health office for a school district, but that she has difficulty fully applying herself to her work due to separation from the applicant. *Id.* She explained that she saw a doctor for depression and that she is taking medication to calm her down. *Id.*

The applicant provided numerous letters from friends and relatives which attest that his wife is experiencing emotional hardship due to separation from him, and that she has had difficulty applying herself to education to pursue her medical career.

The applicant submitted a statement indicating that it is against Hindu custom for a husband and wife to live apart. *Statement from ██████* dated February 27, 2007.

The applicant stated that conditions in Fiji are difficult, including political instability, prevalent crime, a lack of educational opportunities, and unemployment. *Statement from the Applicant*, dated February 25, 2007. The applicant stated that his wife will experience hardship in Fiji, and that it would be wiser for him to relocate to the United States. *Id.* at 1. He provided that conducting long-distance communication with his wife is causing an economic burden for them. *Id.* at 2.

Upon review, the applicant has not shown that his wife will suffer extreme hardship should he be prohibited from entering the United States. The applicant has not shown that his wife will experience extreme hardship should she remain in the United States without him. The record contains references to economic hardship the applicant’s wife is experiencing due to separation from the applicant. Yet, the applicant has not provided a clear account of his wife’s regular expenses. Nor has the applicant indicated whether his wife has financial resources other than her employment. The applicant has not shown that his wife has depended on his economic contribution at any time, thus the applicant has not asserted or shown that she is unable to meet her needs in his absence.

The applicant asserts that his wife will experience emotional hardship should she continue to be separated from him. While the AAO acknowledges that family separation often involves considerable emotional consequences, the applicant has not distinguished his wife’s hardship from that which is commonly expected when family members are separated due to inadmissibility. 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.

The record reflects that the applicant’s wife has not lived with the applicant on a permanent basis at any time. It is noted that the fact that the applicant’s marriage was arranged is inconsequential in assessing extreme hardship, and the applicant is not prejudiced by the fact his family arranged his marriage. Yet, the AAO must look to factors surrounding the applicant’s wife’s history to evaluate her emotional consequences. It is significant that the applicant’s wife has never resided with the applicant, thus separation from the applicant does not constitute a change in her circumstances or the end of a lengthy marital cohabitation.

The AAO acknowledges that it is Hindu custom for married couples to reside together. Yet, this cultural practice is not sufficient to elevate the applicant’s wife’s emotional hardship to extreme hardship.

Counsel contends that the applicant’s wife has been involved in ongoing therapy due to emotional difficulty. Yet, the applicant has not presented any documentation to support this assertion. The report from [REDACTED] does not indicate that he is providing ongoing services to the applicant’s wife. [REDACTED] indicated that the applicant’s wife is suffering depression and panic attacks which are affecting her ability to perform daily tasks. Yet, the applicant has not submitted any evidence of follow-up care, or a more detailed analysis to reflect the basis of [REDACTED]’s observations. While the AAO values the opinion of a medical professional, the report from [REDACTED] does not represent treatment for a mental health disorder or an ongoing relationship with a mental health care provider. Thus, the report is not sufficient to show that the applicant’s wife is experiencing extreme hardship.

Based on the foregoing, the applicant has not shown that his wife will experience extreme hardship should he be prohibited from entering the United States and she remain.

The AAO acknowledges that the applicant’s wife would face hardships should she relocate to Fiji to attain family unity. Residents in Fiji face human rights challenges, yet the applicant has not shown that his wife would face particular risk or that she would be targeted for harm. The applicant’s wife would face the disruption of her employment and educational activities in the United States, as well separation from her family and community. Counsel contends that the applicant’s wife would endure problems with communication in Fiji, yet as English is widely spoken in the country, the applicant has not shown that his wife would be unusually isolated or limited in her employment opportunities. The applicant has not submitted clear evidence to show that his wife would face serious economic hardship in Fiji. Nor has the applicant described his wife’s connections to Fiji, such as the presence of additional family members there. Thus, considering all elements of hardship in aggregate, the applicant has not shown by a preponderance of the evidence that his wife would face extreme hardship should she join him in Fiji.

Based on the foregoing, the applicant has not shown that denial of the present waiver application would result in extreme hardship to his wife. 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 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.