

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

H

FILE: [REDACTED] Office: PHILADELPHIA, PA

Date: JUN 26 2009

IN RE: [REDACTED]

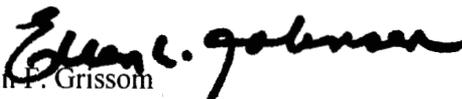
APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the
Immigration and Nationality Act (INA), 8 U.S.C. § 1182(h)

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.


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 sustained.

The record reflects that the applicant is a native and citizen of Egypt who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i), for having been convicted of certain crimes. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with his wife and children in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated January 21, 2005.

On appeal, counsel contends that the applicant did, indeed, establish extreme hardship to a qualifying relative.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED], indicating they were married on April 25, 2001; tax documents; conviction documents; letters from the applicant, [REDACTED], and [REDACTED] father; a letter from [REDACTED] physician; a letter from [REDACTED] employer; a copy of the birth certificate of the couple's U.S. citizen son; and an approved Immigrant Petition for Alien Relative (I-130). The entire record was reviewed and considered in rendering this 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, or
- (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 802 of Title 21),

is inadmissible.

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

(h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) of this section 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 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 shows that on July 12, 2000, the applicant attempted to purchase the equivalent of approximately one gram of marijuana for ten dollars from an undercover police officer. *Letter from* [REDACTED], dated June 1, 2009. The applicant was subsequently convicted of attempting to intentionally possess a controlled substance and was fined \$300.¹ Therefore, the record shows, and counsel does not contest, that the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a law relating to a controlled substance. However, as his conviction related to less than 30 grams of marijuana he is eligible for a waiver under section 212(h) of the Act.

A section 212(h) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse, parent, son, or daughter of the applicant. 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-Morales*, 21 I&N Dec. 296 (BIA 1996).

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. *See 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 alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include: 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

¹ The record also shows that on February 11, 2003, the applicant was convicted of disorderly conduct and fined \$300.

is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

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 Court of Appeals for the Ninth Circuit has held that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[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.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *see also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted); *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th Cir. 1981) (economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme) (citations omitted).

In this case, the applicant’s wife, _____ states that her husband’s removal from the United States would cause a significant psychological impact on her and her sons. _____ explains that her older son, _____, who is now fourteen years old, lost his biological father in 2000 after his father was in a motorcycle accident which put him in a coma for over three years before he passed away. She states she “was suddenly left with a son without a father and without any support.” She claims she was treated for depression, was on medication, and went to counseling for four years. She states her depression subsided when she began a relationship with the applicant in early 1999. She states that the applicant has “accepted _____ as his step-son from day one,” and the record shows that the applicant and _____ have a son, _____, who is six years old. _____ states it would be extremely difficult for her and both of her sons if her husband’s waiver application were denied, particularly for _____ who has already lost one father. In addition, _____ states that the applicant financially supports the family and that she works only part-time. She contends that if the applicant were removed from the United States, she would be unable to pay all of the household expenses herself and would incur additional babysitting expenses. She states the applicant, without her knowledge, opened a diner in 2004 and, because of this business venture, has incurred debt of approximately \$30,000 to \$35,000 which has put a significant amount of stress on the family.² Furthermore, _____ states she was born and raised in the United States, does not speak any other languages, and has close family ties in the area including her father, aunts, uncles, and cousins. She also has a very close relationship with

² According to the applicant, the restaurant closed twenty-one days after it opened. *Letter from _____*, dated November 6, 2004.

biological father's parents and states that [REDACTED] has spent his weekends with them ever since he was born. *Letter from [REDACTED] dated November 6, 2004.*

A letter from [REDACTED]'s doctor, [REDACTED], states that [REDACTED] has been her patient since 1989. [REDACTED] states [REDACTED] has been treated for "severe depression" in relation to [REDACTED] biological father's coma and death. She further states that [REDACTED] has dealt with long-term problems with depression and anxiety which have required medical treatment and, although she is currently doing well without any recurrent depression, [REDACTED] fears [REDACTED] will have a recurrence for her severe problems should the applicant be removed from the United States. *Letter from [REDACTED], dated November 7, 2004.*

After a careful review of the record evidence, the AAO finds that the personal, emotional, and financial hardship that would result from the denial of a waiver of inadmissibility constitute extreme hardship. Although the record could have been more extensive to include, for example, a statement from [REDACTED], more details regarding [REDACTED]'s mental health history, as well as more extensive and more current financial information indicating to what extent the applicant has financially supported the family, it is evident from the record that [REDACTED] has experienced years of extreme stress when her former partner and the father of her son was in a coma for over three years before passing away. The record shows that she has a history of "severe depression" and has had "severe problems," necessitating years of counseling, medication, and treatment. [REDACTED] doctor fears that if the applicant leaves the country, [REDACTED] will have a recurrence of her severe problems. *Letter from [REDACTED] supra.* In addition, the record shows that [REDACTED] works part-time as a waitress and that if the applicant were removed from the United States, she would be unable to afford paying her household expenses. *See Letter from [REDACTED], dated May 3, 2001; 2000 U.S. Schedule of Unreported Tip Income (Schedule U) (indicating [REDACTED] earned \$9,404); 1998 W-2 Wage and Tax Statement (indicating [REDACTED] earned \$8,675).* Based on these unique facts, the AAO finds that the effect of separation from the applicant on [REDACTED] go above and beyond the experience that is typical to individuals separated as a result of deportation and rises to the level of extreme hardship.

The AAO also finds that it would constitute extreme hardship for [REDACTED] to go to Egypt to avoid the hardship of separation from her husband. [REDACTED] was born and raised in the United States and has lived in the Mechanicsburg, Pennsylvania area for thirty-four years. She does not speak any language other than English and has extensive family in the Mechanicsburg area, including her father, aunts, uncles, and cousins. In addition, she remains close with [REDACTED]'s biological father's parents. Furthermore, she would sever the relationship she has built over the years with her doctor, losing the continuity of care she has received for many years. Based on these factors, the hardship [REDACTED] would experience if her husband were refused admission is extreme, going well beyond those hardships ordinarily associated with deportation. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the applicant bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant's convictions for attempting to purchase marijuana and disorderly conduct, his overstay of his initial visa and periods of unauthorized presence and employment. The favorable and mitigating factors in the present case include: the applicant has significant family ties to the United States, including his U.S. citizen wife and sons; the extreme hardship to the applicant's wife if he were refused admission; a letter of support from [REDACTED] father describing the applicant as "a caring and responsible father"; and the applicant's lack of any additional criminal convictions for the past six years.

The AAO finds that, although the applicant's criminal history is serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.