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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

H₂

FILE:

Office: KINGSTON

Date: JUN 26 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:

SELF-REPRESENTED

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 Officer in Charge, Kingston, Jamaica, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Jamaica, was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of 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 in order to reside in the United States with his U.S. citizen spouse and children, born in 1999 and 2004.

The officer in charge concluded that the applicant had 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 2, 2007.

On appeal, the applicant submitted the Form I-290B, Notice of Appeal (Form I-290B), a letter confirming gainful employment, dated February 27, 2007, certificates of recognition issued to the applicant and medical documentation pertaining to his U.S. citizen children. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2) of the Act provides, in pertinent part:

(A)(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

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

The Attorney General [now Secretary, Homeland Security, (Secretary)] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . 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 (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 . . .

(2) The Attorney General (Secretary), in his discretion . . . has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

The record indicates that in January 1999, the applicant was convicted of a felony in the second degree, specifically, Sexual Battery, a violation of section 794.011(5) of the Florida Statutes, based on a September 1998 incident.¹ The applicant was sentenced to 120 days imprisonment and 10 years probation. Based on a thorough review of the record, the AAO concurs with the officer in charge that the above-referenced conviction makes the applicant inadmissible under 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest the officer in charge's finding. Rather, he is filing for a section 212(h) waiver.

A section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the inadmissibility bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son or daughter of the applicant. Hardship the applicant himself experiences upon removal is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen spouse and children.

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 O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) the BIA held that:

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.

The applicant contends that his U.S. citizen spouse and children will suffer emotional and financial hardship if he is unable to reside in United States. In a declaration the applicant's spouse asserts that

¹ Section 794.011(5) of the Florida Statutes states, in pertinent part:

Sexual battery

(5) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree...

Section 775.082 of the Florida Statutes states, in pertinent part:

Penalties; mandatory minimum sentences for certain reoffenders previously released from prison

(c) For a felony of the second degree, by a term of imprisonment not exceeding 15 years.

she and the children will suffer emotional hardship, due to the long and close relationship they have with the applicant. *See Letter from* [REDACTED] dated November 1, 2005. In addition, the applicant notes that both children suffer from asthma and need both of their parent's daily involvement. A letter from the children's pediatrician has been provided, confirming the children's condition, noting that the children suffer multiple attacks each year and referencing that their condition has required hospitalization for the most severe of the attacks. *See Letter from* [REDACTED] *Downstate Pediatric Associates*, dated February 20, 2007. Finally, the applicant's spouse contends that she is living paycheck to paycheck to provide for herself and the children, and due to this financial hardship, she and the children are living with her mother. *Supra* at 1.

It has not been established that the applicant's spouse and/or children will suffer extreme emotional hardship were the applicant to remain abroad due to his inadmissibility. In addition, it has not been established that the applicant's spouse and/or children are unable to travel to Jamaica to visit the applicant regularly. Finally, it has not been established that the applicant's spouse is unable to properly care for the children, with the help of her mother should such a need arise, in light of their medical condition, without the applicant's physical presence. 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)). As such, the record fails to establish that the applicant's spouse's and/or children's continued care and emotional and financial survival directly correlate to the applicant's physical presence in the United States.

As for the financial hardship referenced above, the AAO notes that courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

No documentation has been provided that outlines the applicant's and his spouse's current financial situation, including income, expenses, assets and liabilities, and their financial needs, to establish that without the applicant's continued presence in the United States, their financial hardship would be extreme. Moreover, no documentation has been provided to establish what specific contributions the applicant made to the household prior to his departure from the United States, to confirm that his absence has caused his spouse and/or children financial hardship. Finally, the AAO notes that the applicant is gainfully employed in Jamaica; it has not been established that he is unable to help his

wife and/or children financially. *See Letter from [REDACTED] General Manger, JamaicaTours, dated February 27, 2007.*

The AAO recognizes that the applicant's spouse and children will endure hardship as a result of separation from the applicant. However, their situation, if they remain in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal 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 AAO concludes that although the applicant's spouse and/or children may need to make alternate arrangements with respect to their own care and the maintenance of the household were the applicant unable to reside in the United States, it has not been established that such arrangements would cause the applicant's spouse and/or children extreme hardship.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates with the applicant abroad based on the denial of the applicant's waiver request. This criteria has not been addressed. As such, it has not been established that the applicant's spouse and/or children would suffer extreme hardship were they to relocate to Jamaica to reside with the applicant due to his inadmissibility.

As such, 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/or children would suffer extreme hardship if he were unable to reside in the United States due to his inadmissibility, and moreover, the applicant has failed to show that his U.S. citizen spouse and/or children would suffer extreme hardship were they to relocate abroad based on the applicant's inadmissibility. The record demonstrates that the applicant's U.S. citizen spouse and/or children face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse/step-parent is removed from 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.

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. 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. The waiver application is denied.