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U.S. Citizenship and Immigration Services  
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U.S. Citizenship  
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Services

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FILE:

Office: BALTIMORE, MD

Date: JUN 30 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, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of New Zealand who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a crime involving moral turpitude.<sup>1</sup> The applicant's spouse is a U.S. citizen. The applicant seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that the applicant was convicted of "procure/possess cannabis plant," this conviction constitutes a crime involving moral turpitude, the applicant failed to submit evidence that he was convicted of possession of under 30 grams, and he failed to establish eligibility for a section 212(h) waiver. *Decision of the District Director*, at 2, dated September 27, 2006. The district director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Id.* at 3.

On appeal, counsel states that the district director abused his discretion by summarily dismissing the waiver in a context-free denial, the denial was arbitrary and capricious, and no weight was given to the evidence submitted. *Form I-290B*, received October 11, 2006. Counsel further contends that the applicant has not been convicted of a crime involving moral turpitude. *Brief in Support of Appeal*, received October 23, 2006.

The record includes, but is not limited to, counsel's brief, counsel's I-601 brief, statements from the applicant and his spouse, medical records for the applicant and his spouse, information on fertility issues, information on other medical issues related to the applicant's spouse, and country conditions information on New Zealand.

The record reflects that on May 20, 1998, the applicant was convicted of possession of cannabis under Section 7(1)(a) of the New Zealand Misuse of Drugs Act of 1975. *Applicant's Criminal Convictions Report*, dated April 11, 2006. The record reflects that the applicant was in possession of approximately 2 grams of cannabis when he was arrested. *Applicant's Caption Sheet*, undated. As such, the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for violating a law relating to a controlled substance.<sup>2</sup>

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<sup>1</sup> The AAO notes that section 212(a)(2)(A)(i)(I) of the Act deals with crimes involving moral turpitude and section 212(a)(2)(A)(i)(II) of the Act deals with violation of controlled substance laws.

<sup>2</sup> The AAO notes that the applicant's possession of cannabis conviction does not render him inadmissible under section 212(a)(2)(A)(i)(I) of the Act for committing a crime involving moral turpitude. The record is not clear as to whether the applicant's February 15, 1995 conviction for "male assaults female (manually)" is a crime involving moral turpitude. The AAO will not address this issue, as a section 212(h) waiver for his possession of cannabis conviction would also waive this crime if it was determined to be a crime involving moral turpitude.

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, or
- (II) A violation (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 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

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) . . . of subsection (a)(2) and of such subsection 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 applicant is eligible to file for a section 212(h) waiver as his conviction was for a single offense of simple possession of 30 grams or less of marijuana. The AAO notes that 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, in this case the applicant's spouse. 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 the applicant's spouse must be established whether she resides in New Zealand or the United States, as she is not required to reside outside 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 the applicant's spouse in the event that she resides in New Zealand. Counsel states that the applicant was born in the United States, has lived her entire life in the United States, her entire family has only resided in the United States, she depends heavily on her family and friends for emotional support, she has no relatives outside of the United States, she has no ties to New Zealand, she has a close relationship with her family and visits them on a regular basis, her parents and grandparents will depend on her and the applicant more as time passes, the applicant assists his spouse's father with construction projects, the applicant and her spouse spend time with the applicant's spouse's niece and nephew, they firmly believe that they have a duty to take care of their extended family, her family would not be able to visit her due to the lengthy and costly flight, the time difference and cost of calling would make telephone contact extremely infrequent, and it would cause her great sorrow to have any future children raised far from her family. *I-601 Brief*, at 6-8, dated June 14, 2006. Counsel states that the applicant is a member of the indigenous Ngapuhi tribe and the tribe has a different language, lifestyle and culture. *Id.* at 8. Counsel states that the applicant is not close to his family, his father died when he was five, his alcoholic mother allowed the children to care for themselves and he does not speak with her, he has no desire to return to New Zealand, and the only family member that the applicant's spouse has met is the applicant's uncle when he visited the United States. *Id.*

Counsel states that the applicant's family lives in the countryside where economic opportunities are non-existent, the applicant and his spouse would be forced to live in this community as it is the only place he would have property rights as a member of the indigenous community, and the applicant's spouse would be forced to live in a community that would not accept her as they did not accept the applicant during his childhood due to his being only half Ngapuhi. *Id.* Counsel states that the applicant's spouse fears that her children would miss out on opportunities in the United States as the education system in Matauri Bay does not meet her standards. *Id.* at 9. Counsel states that the applicant is the child of an interracial couple, he experienced prejudice as a result of his interracial heritage, racial conflict exists between indigenous people and Caucasians, and the future progeny of the applicant and his spouse would not be subject to similar racial hatred in the United States. *Id.* Counsel states that the cost of moving to New Zealand would be exorbitant, purchasing or renting a new home and purchasing a new car would be extremely expensive, and it would be difficult and expensive for the applicant and his spouse to take their adopted dog to New Zealand. *Id.* Counsel states that it will be virtually impossible for the applicant's spouse to find a similar job in New Zealand, she does not speak the local language, and she will have to start over in more junior positions upon return to the United States. *Id.* at 10. Counsel states that the applicant and his spouse

are undergoing fertility treatments, the applicant's spouse suffers from mitral valve prolapse, they will be living in a remote part of the country far from hospitals of the quality available in Baltimore, the applicant's spouse's depression will get worse if she is in a small town in New Zealand where most of the inhabitants are alcoholics and unemployed, the applicant's spouse has invested time and money in fertility treatments, her mother suffered from breast cancer and the applicant's spouse has had a mammogram that indicated further testing was needed. *Id.* at 11.

The applicant's spouse states that she has spent time and money on fertility treatments, she could not start over elsewhere, she has no desire to go to a new physician as she has begun personal medical treatment with a physician she trusts, New Zealand has the highest skin cancer rates in the world, she is being monitored by her cardiologist four times a year as she was diagnosed with mitral valve prolapse, and she takes daily doses of Toprol. *Applicant's Spouse's Statement*, at 1-2, dated June 15, 2006. The AAO notes that many of counsel's statements cite to the applicant's spouse's statement.

The record includes a letter that reflects that the applicant's spouse's mammogram shows an area that requires further evaluation. *Letter from Harbor Hospital*, dated June 3, 2006. However, the results of any further evaluation have not been submitted. The record includes pharmacy receipts for medication. The record includes medical records that indicate that the applicant's spouse wishes to conceive a child. However, the record does not include sufficient evidence to establish the medical problems from which the applicant's spouse suffers. Specifically, the record does not contain statements from any of the applicant's spouse's doctors indicating that she is being treated for mitral valve prolapse or infertility, or has been diagnosed with depression. Without these statements, the submitted medical documentation is insufficient to establish how relocation would affect the applicant's spouse's health. The AAO notes the claims of financial hardship (inability to obtain employment and racial prejudice) that appear to be related to the applicant and his spouse relocating to his tribal home area. However, the record does not establish that the applicant and his spouse would have to reside in this area and could not live and work elsewhere in New Zealand. The record does not include sufficient evidence to establish the emotional, financial or any other type of hardship that the applicant's spouse would encounter in New Zealand. 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)). Although the record reflects that the applicant's spouse may experience difficulty in New Zealand, the applicant has not established that his spouse would suffer extreme hardship upon residing in New Zealand permanently.

The second part of the analysis requires the applicant to establish extreme hardship in the event that the applicant's spouse remains in the United States. Counsel states that the exorbitant cost of airfare and the 26 hour flight would make travel financially unaffordable and very rare for the applicant's spouse, she would have to take long absences from work, which would cut into the family income, and the applicant's spouse has been prescribed Zoloft for her anxiety. *I-601 Brief*, at 7-8. Counsel states that the applicant's spouse's insurance does not provide prescription, dental and vision coverage, and the applicant assists with paying the bills. *Id.* at 9. Counsel asserts that the applicant's spouse would be in dire financial straits if she had to pay all the bills. *Id.* The applicant's spouse states that she is emotionally devastated at the thought of never being a mother,

she has spent time and money on fertility treatments, and that she has a rare genetic condition and that her mother suffered from the same condition. *Applicant's Spouse's Statement*, at 1. As previously noted, however, the record does not include sufficient evidence of the applicant's spouse's purported medical problems and treatments, or the severity of her medical problems. While the AAO notes the claim of financial hardship made by counsel, the record is not clear as to the applicant's or his spouse's actual income, and the copies of bills and checks submitted do not provide a clear picture of the applicant's spouse's monthly financial obligations. The record does not include sufficient evidence to establish the emotional, financial or any other type of hardship that the applicant's spouse would encounter without the applicant. Accordingly, the record does reflect that the applicant's spouse would suffer extreme hardship upon remaining in the United States.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> 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 (9<sup>th</sup> 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, when considered in its totality, finds that the applicant has failed to show that a qualifying relative would suffer extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in an additional discussion of 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.