



U.S. Citizenship
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FILE:

Office: MIAMI, FL

Date: MAR 06 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. Grisson, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida. The matter 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 Honduras who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) and section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I) and 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a crime involving moral turpitude and a violation of a law related to a controlled substance. The applicant has a U.S. citizen spouse, and he seeks a waiver of inadmissibility in order to reside with his family in the United States.

The district director found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *District Director's Decision*, at 6, dated July 3, 2008.

On appeal, counsel asserts that the applicant's spouse will suffer extreme hardship if the applicant is refused lawful permanent status and the applicant deserves a favorable exercise of discretion. *Form I-290B*, at 2, dated July 30, 2008.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement, medical documents for the applicant's spouse, letters of support for the applicant and country conditions information on Honduras. The entire record was reviewed and considered in arriving at a decision on the appeal.

The applicant was convicted of possession of less than 20 grams of marijuana under Florida Statute § 893.13(6)(B) on February 20, 2002. The applicant was also convicted of theft under Florida Statute § 812.014 on August 20, 2001. As the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for his marijuana possession conviction, it will not address whether his crime of theft involves moral turpitude and whether he is, therefore, also inadmissible under section 212(a)(2)(A)(i)(I) of the Act, as both grounds of inadmissibility are subject to the requirements of section 212(h) of the Act.

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 AAO notes that section 212(h) 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. 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.

The AAO notes that extreme hardship to the applicant's spouse must be established whether she relocates to Honduras or resides in the United States, as there is no requirement that she 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 a qualifying relative in the event of relocation to Honduras. The statement from the applicant's spouse details the difficult country conditions in Honduras. *Applicant's Spouse's Statement*, at 2, dated June 30, 2008. The record also contains published country conditions reports on Honduras, including a Public Message from the American Citizen Services Unit at the U.S. Embassy in Honduras and the section on Honduras from the U.S. Department of State 2007 Country Reports on Human Rights Practices. The AAO notes that Honduras is currently listed as a country whose nationals are eligible for

Temporary Protected Status due to the damage done to the country from Hurricane Mitch and the subsequent inability of Honduras to handle the return of its nationals. 73 Fed. Reg. 57133, 57134 (Oct. 1, 2008). Under the TPS program, citizens of Honduras are allowed to remain in the United States temporarily due to the inability of Honduras to handle the return of its nationals due to the disruption of living conditions. *Id.* As such, requiring the applicant's U.S. citizen spouse to relocate to Honduras in its current state would constitute extreme hardship to her.

The second part of the analysis requires the applicant to establish extreme hardship in the event that the qualifying relative resides in the United States. The applicant's spouse states that she had a bicycle accident in May 2006, she was diagnosed with a lumbar spine fracture and lumbar strain, she is suffering from constant chronic back strain, the applicant takes care of her, and the applicant drives her to the doctor's office and brings her prescriptions. *Applicant's Spouse's Statement*, at 1. The applicant's spouse also states that she was in a car accident in January 2008, she suffered a head injury and arm contusion, and she relies on the applicant to help her go through treatment. *Id.* The applicant's spouse states that she is having increased nightmares and is constantly depressed, and separation would be unbearable. *Id.* The applicant's spouse states that the applicant is the only person willing and able to take care of her in the United States. *Id.* at 2. The AAO notes that the record contains evidence of the applicant's spouse's prior injuries. However, the record does not document that she continues to experience any medical or emotional hardship, or that she requires the applicant's presence to assist her with such problems. The record does not include evidence of any other forms of hardship. 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)). Based on a review of the record, the AAO finds that the record does not establish that the applicant's spouse would experience extreme hardship if she remained in the United States without the applicant.

U.S. court decisions have repeatedly 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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.