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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: MAY 1 5 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.

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, 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 Jamaica 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 is the son of a U.S. citizen father and lawful permanent resident mother 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 parents in the United States.

The district director found that the applicant's numerous criminal convictions far outweighed any positive factors in the case and denied the application in the exercise of discretion. *Decision of the District Director*, dated September 19, 2006.

On appeal, counsel contends that the district director erred in considering the applicant's juvenile convictions and that the applicant's parents would suffer extreme hardship if his waiver application were denied.

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 conspirary 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 may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) of subsection (a)(2) . . . insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if – . . . in the case of an immigrant who is 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 permanent resident spouse, parent, son, or daughter of such alien.
>
> . . . .
>
> (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 district director found, and counsel does not contest, that, in addition to several traffic violations,[1] the applicant has been arrested and convicted four other times, as follows:

1. On November 22, 1995, when the applicant was seventeen years old, he was convicted of armed burglary and three counts of grand theft.

2. On December 21, 1995, when the applicant was seventeen years old, he was convicted of carrying a concealed firearm and possession of a weapon/firearm on school property.

3. On November 5, 1998, when the applicant was nineteen years old, he was convicted of consuming alcohol in public.

4. On July 27, 2000, when the applicant was twenty-two years old, he was convicted of possession of cannabis.

The record shows, and counsel does not contest, that the applicant is inadmissible under section 212(a)(2)(A)(i) of the Act. For instance, without even considering the applicant's convictions from when he was a juvenile, based solely on the applicant's 2000 conviction for possession of cannabis, the record clearly shows 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. The AAO notes that the district director did not err in considering the applicant's juvenile convictions. Section 212(a)(2)(A)(ii), which provides an *exception* to inadmissibility based on a crime involving moral turpitude for applicants who, among other things, committed the crime when under eighteen years of age, indicates that juvenile convictions may, in fact, be considered.

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[1] In addition to the traffic violations listed in the district director's decision, the record also shows that the applicant was convicted of driving under the influence of alcohol/drugs on January 19, 2005 and was arrested for possession of 21.5 grams of cannabis in July 2004. The disposition of that arrest is not in the record.

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-Moralez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999), provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under the Act. These factors include: 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.

In this case, the applicant's mother, , states that she would suffer extreme hardship if the applicant's waiver were denied because she had lung cancer. *Affidavit of* , dated May 2, 2006. She states that she has completed chemotherapy and that her last surgery was November 28, 2005. *Id.* However, she states that she still sees several doctors and needs her son to drive her to appointments because she does not drive. *Id.* claims her husband and her two other children cannot help her because "[her] husband has to pay the mortgages on [their] two homes and [her] daughter has her own life and [her] other son is unavailable because he is busy running his own business and needs to be available to help his clients." *Id.* The record also contains a note from Ms. doctor which states, in its entirety, "This is to confirm that is under my care for lung carcinoma." *Note from* dated February 28, 2006. Copies of s medical records are also in the record.

Although the AAO is sympathetic to circumstances, there is insufficient record evidence to show that she would suffer extreme hardship if the applicant's waiver application were denied. The AAO recognizes that is a cancer survivor and that the applicant has assisted his mother by taking her to doctor's appointments. However, states that she has finished chemotherapy[2] and does not indicate how often she requires follow up care. In addition, there is no information regarding prognosis and no indication she requires any further treatment. There is no indication regarding what medications, if any, takes, and there is insufficient detail regarding the extent of any assistance she needs or how the applicant cares for her other than driving her to appointments. Furthermore, explanations regarding why her husband, her daughter, and her other son cannot assist in taking her to follow up medical appointments are unpersuasive. Significantly, there are no affidavits, statements, or letters in the record from either the applicant himself or the applicant's other family members. Without more detailed information, the AAO is not in the position

[2] The AAO notes that counsel's statement in the Notice of Appeal (Form I-290B) that "is currently undergoing chemotherapy," is incorrect.

to reach conclusions regarding the severity of a medical condition or the treatment and assistance needed.

Based on the record, the situation in the instant case is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991) (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 mother 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. However, the AAO notes that, as the district director found, the applicant's criminal history is extensive and serious.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), 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.