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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

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FILE: [REDACTED] Office: BALTIMORE, MD Date: NOV 09 2009

IN RE: [REDACTED]

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, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador. He was found to be inadmissible to the United States pursuant to 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 crime involving a controlled substance. The applicant is the son of a lawful permanent resident (LPR) and has one U.S. citizen child. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h) in order to remain in the United States.

The District Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on April 9, 2007.

On appeal, counsel states that the District Director failed to consider the factors in their totality, and that the applicant has established his father and son will suffer extreme hardship if he is excluded.

Section 212(a)(2)(A)(i) of the Act states in pertinent part:

- (1) Criminal and related grounds. —
 - (A) Conviction of certain crimes. —
 - (i) In general. — Except as provided in clause (ii), any 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 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:

The Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) or subsection (a)(2) 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

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

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . 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 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 reflects that the applicant was convicted of Possession of Marijuana, Virginia Code § 18.2-250.1, on October 19, 1999, in the Arlington County General District Court, Arlington, Virginia. [REDACTED] As the applicant has been found to have been convicted of possession of less than 30 grams of marijuana, he is inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), but is eligible for waiver consideration under section 212(h) of the Act. The applicant does not contest these findings.

A waiver of inadmissibility under section 212(h) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse, parent or child of the applicant. Hardship to the applicant is not directly relevant to the determination of extreme hardship under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's LPR father and U.S. citizen son are the only qualifying relatives. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted.

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 Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, 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 is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

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).

The AAO notes that extreme hardship to a qualifying relative should be established whether he or she relocates with the applicant or remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record of proceeding contains the following relevant evidence: counsel's brief; a statement from the applicant and his father; a copy of the applicant's father's Permanent Resident Card; a letter of employment for the applicant; court records for the applicant's conviction; birth certificates for the applicant and his son; tax records and mortgage documentation evidencing the applicant's ownership of property; country conditions information on El Salvador, including printouts from the World Bank and the U.S. Agency for International Development (USAID).

The entire record was reviewed and all relevant evidence considered in rendering this decision.

On appeal counsel asserts that, when considered in the aggregate, the applicant has established extreme hardship to his LPR father and U.S. citizen son. Specifically, he notes the combined effect of the emotional and economic impacts of the applicant's exclusion on his father, son and life companion, the hardship the applicant will face on his return to El Salvador and the need for his skill set in the U.S. marketplace. Counsel also notes the applicant's moral character, the circumstances surrounding the applicant's arrest, rehabilitation and respect for law and order, and states that the District Director failed to give necessary consideration to the facts of the applicant's case.

The applicant has been residing with the mother of his child for a number of years, but under the Act she is not a qualifying relative for the purposes of this proceeding as she is not legally married to the applicant. Thus, hardships she may experience as a result of the applicant's inadmissibility are not directly relevant to a determination of extreme hardship. The AAO notes that Congress specifically limited the consideration of the impacts of inadmissibility to qualifying relatives. While the AAO also notes counsel's claims that such factors as the applicant's moral character and the need for his skills in the United States should have been considered by the District Director, it finds such issues are not relevant to an analysis of extreme hardship but are, instead, appropriately considered in the exercise of discretion should extreme hardship be established.

Counsel asserts that the District Director failed to consider the conditions in El Salvador and that the applicant has no family in El Salvador and would be returning to a country bereft of infrastructure or employment opportunities. The applicant, however, is not a qualifying relative in this proceeding. Under section 212(h), hardships to the applicant are not considered except as they relate to qualifying relatives. Accordingly, the District Director correctly determined that hardship to the applicant in El Salvador would not be considered. The AAO notes, however, that El Salvador has been designated for Temporary Protected Status through September 9, 2010. Given the conditions present in El

Salvador, the AAO finds that relocation to El Salvador with the applicant would result in extreme hardship to the applicant's qualifying relatives.

Counsel asserts that the applicant's LPR father and U.S. citizen son would experience economic and emotional hardship upon the applicant's removal. He contends that the applicant's son would experience extreme emotional anguish if his father is removed from the United States. Counsel further asserts that, without the applicant, the applicant's son would also be subjected to severe material deprivation as the applicant contributes the greater part of the family's income. Counsel notes that the applicant's companion earns only \$17,000 a year and that, without the applicant's income, she would find it difficult to pay for even the basic necessities for their child. Counsel also states that the applicant's companion would be unable to make the mortgage payments on their house and that she would be forced to return to renting and, perhaps, have to turn to public assistance to care for the applicant's son. While the AAO notes these claims, the record does not contain documentary evidence that establishes the emotional impact of separation on the applicant's son. Neither does it include any financial documentation that demonstrates the income of the applicant's companion or the financial obligations she would face in the applicant's absence, which might affect her ability to provide financially for the applicant's son in his absence. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel also states that the applicant's father, who lives near his son and spends time with him and his grandson, would experience extreme emotional hardship if the applicant is removed from the United States. Counsel contends that the applicant's father would lose not only the emotional comfort he receives from his frequent meetings with his son, but would likely be unable to spend nearly as much time with his grandson. Counsel also points to the emotional stress that would be created for the applicant's father if he were to have a loved one living in the economically devastated and dangerous El Salvador. Again, however, the record includes no documentation to support counsel's claim that the applicant's removal would result in extreme emotional hardship to his father. Thus, a review of the hardship factors raised by counsel, whether considered individually or in the aggregate, does not find that the applicant's LPR father or U.S. citizen son would experience extreme hardship if the applicant were removed and they remained in the United States.

When reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, the record does not support a finding that the applicant's LPR father and U.S. citizen son would face extreme hardship if the applicant is refused admission. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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. In the present case, the record fails to distinguish the hardship that would be experienced by the applicant's LPR father and U.S. citizen son from that suffered by other individuals whose sons and fathers have been found to be inadmissible to the United States. The

AAO therefore finds that the applicant has failed to establish extreme hardship to his LPR father or U.S. citizen son as required under section 212(h) of the Act. Having found the applicant ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion. Accordingly, the AAO will not address the discretionary factors, e.g., the applicant's moral character, raised by counsel on appeal.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. Here, the applicant has/has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.