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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

H2

[Redacted]

FILE: [Redacted] Office: BALTIMORE, MD

Date:

MAY 05 2010

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:

[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).

Perry Rhew
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 applicant is a native and citizen of Niger who 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 violated a law related to a controlled substance. The applicant's spouse is a U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).

The district director concluded that the applicant had failed to establish eligibility for a section 212(h) waiver and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, at 4, dated October 31, 2007.

On appeal, counsel asserts that the applicant's spouse will suffer extreme hardship if the applicant is not allowed to adjust status. *Brief in Support of Appeal*, at 2, dated November 28, 2007.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement and documents relating to the applicant's conviction. The entire record was reviewed and considered in arriving at a decision on the appeal.

On October 19, 2000, the applicant was convicted of possession of marijuana (4.17 grams) in the District Court of Maryland for Montgomery County.¹ 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.

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:

¹ The record does not list the section of law that the applicant violated. However, it appears to be Maryland Statutes, Title 5, Section 601, which is the section of law related to possession of a controlled substance.

(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 –

(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 . . .

Section 212(h) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, in this case, the applicant’s spouse. Hardship to the applicant is not a permissible consideration in a 212(h) waiver proceeding except to the extent that such hardship may affect the qualifying relative. 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*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of lawful permanent resident or U.S. 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 resides in Niger or in the United States, as she is not required to reside outside of 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 Niger. The applicant’s spouse states that she was born in San Diego, she has lived in the United States her whole life, and she does not think they will be able to survive in Niger due to the economic and political situation. *Applicant’s Spouse’s Statement*, at 2, dated November 16, 2007. The record does not include country conditions information on Niger or any other documentation that establishes that the applicant’s spouse would experience extreme hardship in Niger. 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)). The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship

that, in their totality, establish that the applicant's spouse would suffer extreme hardship if she relocated to Niger.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. The applicant's spouse states that the applicant is the closest person in the world to her, he has shown her more compassion than anyone ever has, they are in the process of beginning a family, it would be a real tragedy to have a child and then have the father removed from his/her life, and she will be emotionally devastated if he is not allowed to adjust. *Applicant's Spouse's Statement*, at 1-2. The record does not include supporting documentary evidence of the emotional hardship that the applicant's spouse would experience without the applicant. As mentioned, 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)).

Counsel states that the applicant's spouse's income is not stable as she is a substitute teacher, she could be laid off at any time, the additional income from the applicant would prevent her from becoming dependent on the government if she were to be laid off, the applicant and his spouse are expecting a baby, the warm and tender care required during pregnancy and after birth will be absent, and single parents without the assistance of close family members usually go through extreme hardship while raising their children. *Brief in Support of Appeal*, at 2. The record reflects that the applicant's spouse is a substitute teacher, she is a temporary employee and she is not eligible for benefits. *Letter from* [REDACTED] dated December 7, 2006. The record also reflects that the applicant's spouse receives health care coverage through the applicant's employment. *Spousal Health Coverage Information Form*. The applicant's and his spouse's tax return, in combination with the applicant spouse's Form I-864, indicates that the applicant is making significantly more money than his spouse. The record indicates that the applicant's spouse may experience some financial difficulty without the applicant. However, there is no indication in the record that the applicant's spouse suffers from any physical condition that would go untreated in the applicant's absence. The record also fails to establish that the applicant's spouse is pregnant or that she is experiencing any mental health problems for which she requires treatment. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the applicant's spouse would suffer extreme hardship if she remains in the United States.

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 a qualifying relative caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in an additional discussion of whether he 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. *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.