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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



File: [Redacted] Office: LOS ANGELES, CA Date:

IN RE: Applicant: [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)

APR 29 2003

IN BEHALF OF APPLICANT:



identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted and the order dismissing the appeal will be affirmed. The application will be denied.

The applicant is a native and citizen of Jamaica who was found by the district director to be inadmissible to the United States under 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 married to a citizen of the United States and is the beneficiary of an approved petition for alien relative. He seeks a waiver of this permanent bar to admission as provided under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States and reside with his spouse and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the application accordingly. The AAO affirmed that decision on appeal.

On appeal, counsel submitted letters of support on the applicant's behalf from three private individuals; a copy of a petition indicating that the applicant requested dismissal of court action regarding a criminal conviction dated February 28, 1992; and a physician's letter indicating that the applicant's spouse was temporarily totally disabled (TTD) from October 27, 1998 until July 18, 2000. Counsel stated that although the applicant had a troubled childhood and problematic teenage years during which he committed offenses, he has since reformed and his determination to succeed has earned him the admiration and respect of his friends and family. Counsel also stated that the applicant has been employed by the same company since 1994, owes the government no taxes, has been married to his spouse since 1996, has two United States citizen children, and is the family's sole source of financial support.

On motion, counsel submits a brief and declaration from the applicant's spouse dated May 16, 2001 and additional documentation concerning the spouse's medical condition. Counsel states that the applicant has no family ties outside of the United States, would not be able to afford his spouse's medical treatment if removed to Jamaica, that the conditions in Jamaica have deteriorated since the applicant left that country, and the financial impact of the applicant's removal would be enormous. Counsel further asserts that the spouse's acute emotional and physical condition have increased and become overwhelming since the denial of the applicant's waiver request.

The record reflects that the applicant was convicted on or about February 5, 1992 in the Municipal Court of Los Angeles, West Los

Angeles Municipal District, of theft of property in violation of section 484(A) of the California Penal Code (CPC). The applicant was also convicted, in or about March 1993, of grand theft from a person in violation of section 487.2 of the CPC. The record contains evidence of several other arrests, dating between January 1992 and August 1995, that were either dismissed or for which the dispositions are not noted.

Section 212(a) of the Act states:

CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-
Except as otherwise provided in this Act, aliens who are ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

* * *

(2) CRIMINAL AND RELATED GROUNDS.-

(A) CONVICTION OF CERTAIN CRIMES.-

(i) IN GENERAL.- Except as provided in clause (ii), an alien convicted of, or who admits having committed, or who admits committing such 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, is inadmissible.

Section 212(h) of the Act states:

The Attorney General may, in his discretion, waive application of subparagraphs (A) (i) (I), ...if-

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i)...the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(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; and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

Here, fewer than 15 years have elapsed since the applicant committed his last violation. Therefore, he is ineligible for the waiver provided by section 212(h)(1)(A) of the Act.

Section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission resulting from inadmissibility under 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. The key term in the provision is "extreme." Therefore, only in cases of great actual or prospective injury to the qualifying relative(s) will the bar be removed. Common results of the bar, such as separation or financial difficulties, in themselves, are insufficient to warrant approval of an application unless combined with much more extreme impacts. *Matter of Ngai*, 19 I&N Dec. 245 (Comm. 1984). "Extreme hardship" to an alien himself cannot be considered in determining eligibility for a section 212(h) waiver of inadmissibility. *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968).

On appeal, counsel stated that the applicant is the sole support of his spouse. Counsel asserted that the spouse suffered an accident prior to the birth of the couple's second child resulting in a chronic back problem that renders her bed ridden for days at a time. Counsel asserted that the spouse's condition demands constant medical attention as well as domestic assistance from her husband in daily chores and care of their children. No documentation or evidence as to the specific nature and extent of the spouse's medical problem or the diagnosis or prognosis of her condition was submitted on appeal.

On motion, counsel submits documentation concerning the spouse's medical condition, including a letter of referral from a qualified medical examiner dated March 13, 2000; a letter from a clinical psychologist dated November 29, 2000; and a letter from an orthopedic practice concerning an examination of the spouse conducted on March 19, 2001. The November 29, 2000 letter reflects that the spouse appeared for a re-evaluation session during which she was agitated and anxious, had been accused of causing problems at work and instigating arguments, and expressed feelings of hopelessness and helplessness. The March 13, 2000 letter indicates that the spouse continued to be depressed and that she was obtaining psychiatric treatment in the form of supportive psychotherapy and psychopharmacotherapy. She was to be re-evaluated in three to four weeks. The March 19, 2001 letter discusses the applicant's medical history in more detail. It indicates that the spouse was injured, while pregnant, in a work-related accident on October 27, 1998. She underwent non-surgical treatment for pain in her back and right leg but her condition did not improve. Diagnostic testing was performed. While an MRI scan of her right hip was essentially normal, a scan of her lower back showed disc bulging at multiple levels. The physician advised the spouse that if she was going to improve, she was likely to require arthroscopic surgery. She responded that she was not interested in surgery at that time. The physician further noted that the spouse should avoid heavy work as well as prolonged sitting. He indicated that she could not return to the same work she was previously performing and should be vocationally rehabilitated into a suitable occupation.

It is noted that the record is not clear concerning the spouse's current employment situation. While she was temporarily disabled from October 27, 1998 through July 18, 2000, it appears that she was employed as of November 29, 2000. There is no evidence contained in the record that she is now permanently disabled. Furthermore, while the psychological and physical ill health of the spouse is unfortunate, the record does not contain sufficient documentary evidence that she has a significant condition of health for which treatment would be unavailable in Jamaica.

In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation.

There are no laws that require a United States citizen to leave the United States and live abroad. Further, the common results of deportation are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991). 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. See *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994). In *Silverman v. Rogers*, 437 F.2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States."

The court 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, fails to establish the existence of hardship over and above the normal social and economic disruptions involved in the removal of a family member. It is concluded that the applicant has not established the qualifying degree of hardship in this matter. The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Attorney General and pursuant to such terms, conditions, and procedures as he may by regulations prescribe. Since the applicant has failed to establish the existence of extreme hardship, no purpose would be served in discussing a favorable exercise of discretion at this time.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. *Matter of Ngai, supra*. Here, the applicant has not met that burden. Accordingly, the order dismissing the appeal will be affirmed. The application will be denied.

ORDER: The AAO order dated April 16, 2001 dismissing the appeal is affirmed. The application is denied.