



U.S. Citizenship  
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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 18 2008

IN RE: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the  
Immigration and Nationality Act (the Act), 8 U.S.C. section 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director, California Service Center. 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 of Cape Verde and citizen of Sweden who entered the United States as an L-1A intra-company transferee on July 22, 1996 and last entered the United States on August 14, 2000 with advance parole. He was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (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 married to a United States citizen and he is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his spouse.

The director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. *See Service Center Director Decision* dated March 10, 2006.

On appeal, counsel asserts that Citizenship and Immigration Services (“CIS”) abused its discretion by failing to thoroughly analyze the facts and evidence in the case and in misapplying the law regarding extreme hardship. Specifically, counsel claims that CIS abused its discretion by failing to consider several factors related to the hardship the applicant’s wife would suffer, that it failed to consider the factors cumulatively, and that it did not give due consideration to a psychological report submitted as evidence. Counsel further asserts that the cases cited by CIS in the denial letter can be distinguished from the applicant’s situation. Counsel submitted additional evidence, including a letter from a psychiatrist treating the applicant’s wife and letters from friends and relatives of the applicant and his wife, to further support a finding of extreme hardship to the applicant's wife should he be returned to Sweden.

Section 212(a)(2)(A)(i) 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-

...

- (II) a violation of (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) states in pertinent part:

- (h) 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 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 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 applicant was convicted of possession of 50 grams or less of marijuana in violation of New Jersey Statutes Annotated section 2C:35-10(4). The amount of marijuana possessed by the applicant was .760 grams, and he is therefore eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(1)(B) of the Act.

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 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.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the court 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 *Hassan v. INS*, *supra*, the court further held 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. Moreover, the U.S. Supreme Court additionally 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.

Counsel states that there were several factors present that CIS did not adequately consider when evaluating whether the applicant's wife would suffer extreme hardship if the waiver application were denied. A review of the record indicates that the director considered the evidence submitted by the applicant, including an affidavit prepared by his wife and a psychological evaluation concluding she was suffering from an anxiety disorder, when evaluating the hardship she would experience. The director concluded it had not been proven that any hardship the applicant's wife might suffer if she chose to remain in the United States would be "anything other than that normally experienced when families are separated."

A report prepared by [REDACTED], a psychologist who examined the applicant's wife, states that she suffers from an anxiety disorder that has been exacerbated by fears that her husband might be forced to leave the United States. See *Forensic Psychological Report*, dated September 18, 2005, submitted as attachment to I-601 application. The findings in this report, as well as a letter from the applicant's psychiatrist submitted with the appeal, have been taken into consideration.

It appears from the evidence that the applicant's wife is suffering from anxiety because she fears she might be separated from her husband. [REDACTED] states that the applicant's wife would suffer extreme emotional hardship if her husband were deported and she remained in the United States. Although the input of any mental health professional is respected and valuable, the AAO notes that the report from [REDACTED] is based on a single interview rather than an ongoing relationship between the mental health professional and the applicant's wife. The report does not document any history of treatment for the generalized anxiety disorder suffered by the applicant's spouse and states that she "was informed prior to the evaluation that the usual doctor-patient relationship did not exist and that the information obtained during this evaluation was not confidential." The conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

A letter from [REDACTED] dated May 2, 2006, which was submitted with the appeal, states that the applicant's wife is under her care for medical treatment. See *Exhibit F*. [REDACTED] indicates that she has been managing the psychiatric care of the applicant's wife since February 6, 2005, when she arrived at her office "in a state of severe panic." The letter also states that the applicant's wife has a ten year history of panic disorder and that she reported a "marked increase in her stress level," which the applicant's wife felt was "related to 'living with the uncertainty of immigration issues.'" The AAO notes that although [REDACTED] reports that she has been treating the applicant since February 2005, the report from [REDACTED], dated September 2005, states, "She is currently suffering with a psychiatric illness, Panic Disorder with Agoraphobia that requires psychiatric treatment. I have referred her to a psychologist who specializes in the treatment of anxiety disorders." It is not clear why Dr. [REDACTED] would need to refer the applicant's wife to a psychologist if she were already under the care of [REDACTED] a psychiatrist, for her anxiety disorder. But this calls into question the extent of the relationship between her and [REDACTED] from the time she first sought treatment in 2005 to the date the letter was prepared. [REDACTED]'s letter does not specify how many times or how frequently the applicant's wife had been seen by her, or whether she had been prescribed any medication or other treatment. The letter states the applicant's wife has a ten-year history of panic disorder, but it also states that she only first sought treatment when uncertainty arose concerning her husband's immigration status in 2005.

The letter also indicates that due to the condition of the applicant's wife, her husband's deportation would subject her to a severe psychological hardship and would probably impair her ability to function in her workplace. The AAO notes, however, that in the ten years she has reportedly suffered from this condition, she has completed a law degree from Fordham University, worked as an associate at a law firm, left the practice of law and obtained employment as an agent with Colombia Artists Management after a lengthy and challenging interview process, and received excellent reviews in what she describes as a highly competitive field. See *Affidavit of [REDACTED]*, *Exhibit C*. These achievements suggest that that her condition is not so serious as to impair her ability to function even when her stress levels are increased.

The evidence does not establish that the anxiety disorder the applicant's wife is experiencing is more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's deportation. Although the depth of her concern and anxiety over the applicant's immigration status is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the

availability of a waiver of inadmissibility to cases of “*extreme hardship*,” Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exists.

Counsel also indicated that the applicant’s wife would travel to Sweden should the waiver application be denied and listed several types of hardships that she would suffer as a result. In denying the petition, the director cited *Matter of Ige*, 20 I & N Dec. 880 (BIA 1994), to support the determination that “the claim to hardship would only affect the qualifying spouse if they chose to depart the United States.” Counsel refers to the Ninth Circuit case, *Perez v. INS, supra*, to support the assertion that *Matter of Ige* cannot be used as a per se exclusion of relevant factors of hardship. Counsel has indicated that the applicant’s wife would suffer several types of hardships that cumulatively would amount to extreme hardship should she relocate to Sweden. These include the following:

- (1) The applicant’s wife, who would choose to relocate to Sweden with her husband, would lose her job and be unable to work in Sweden because her field is extremely specialized and she does not speak Swedish;
- (2) The applicant and his wife would lose their only means of support if she were to leave her job and move to Sweden, and she would be unable to pay over \$150,000 of student loans and would face financial ruin;
- (3) The applicant and his wife would lose their medical coverage currently provided through her employment, and they would be unable to pay for medication and treatment prescribed by her psychiatrist;
- (4) The applicant’s wife would lose the means to maintain contact with her family members living in the United States, which would be detrimental because she has no contacts outside of the United States.

Counsel asserts that the applicant’s wife would be unable to work in Sweden because she does not speak the language, her law degree would be “useless” in Sweden, and her field is extremely specialized. Counsel further states that her current position is “not a mere job” but rather her “dream job, a huge part of who she is as a person.” Counsel cites *Villena v. INS*, 622 F.2d 1352 (9<sup>th</sup> Cir. 1980), to support the contention that “it may be a hardship for a person to be foreclosed from practicing his profession.” There is no evidence submitted to support the claim that the applicant’s wife would be unable to work in Sweden. Further, although she has a law degree, she left this profession several years ago and had been working since 2003 as a booking agent. There is no evidence that she would be unable to find comparable employment in Sweden.

The evidence on record does not support the claim that the applicant and his wife would lose their only means of financial support and face financial ruin should they move to Sweden. The applicant was raised in Sweden and was employed there for several years with the Diesel clothing company until he was transferred as an L-1A intra-company transferee to help launch the brand in the United States. While living in the United States, he states he is “often invited to the Swedish Consular Residence on Park Avenue because [he is] part of a group of creative Swedish people living in New York.” See *Affidavit of [REDACTED]*, Exhibit D. Documentation submitted in support of the immigrant petition filed by [REDACTED] on behalf of the applicant states that the applicant coordinated and directed various events to build the company’s name in the United States, “using a vast network of connections in the fashion community to put together fashion shows in various parts of the country.” See *letter from [REDACTED] Chief Financial Officer, Diesel USA, dated December 6, 1996, submitted in support of applicant’s I-140 petition*. Further, in his managerial position with a subsidiary of Diesel International in Sweden from 1991 to 1996, the applicant oversaw Diesel’s promotion activities, “including budget control and media

planning, and . . . exercised discretionary authority over an annual budget of approximately \$1 Million.” See letter from [REDACTED] Vice President, Diesel USA, dated February 5, 1996, submitted in support of applicant’s L-1A petition. Considering the evidence of the applicant’s managerial experience and contacts within the fashion industry and Swedish creative community, the record does not support counsel’s assertion that he would be unable to find employment in Sweden because he lacks a college degree. Further, no evidence was submitted to document the amount of student loan debt owed by the applicant’s wife. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant’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 asserts that if she moves to Sweden, the applicant’s wife would lose her medical coverage and would be unable to afford her medication and the ongoing treatment prescribed by her current psychiatrist, “leading to detrimental health consequences.” The letter from [REDACTED] does not indicate that the applicant’s wife has been prescribed any medications or specific treatment for her condition. The AAO notes that the applicant’s wife states that she has prescriptions for an anti-anxiety drug, Lorazepam, and an anti-depressant, Lexapro. There is no evidence that these medications or comparable treatment would not be available and affordable in Sweden.

Counsel also states that the applicant and his wife are trying to conceive a child, and “[t]reatment by the OBGYN in the minimum and fertility treatments by a fertility specialist in the most likely situation will be necessary.” No medical evidence was submitted to establish that they have undergone any tests to determine if they require any such treatments, or that any such treatments have been prescribed. The only evidence submitted that relates to their efforts to conceive a child is a letter prepared by a nurse practitioner from a gynecologist’s office. It states only that the applicant’s wife recently discussed her wishes to conceive a child and they recommend that “patients who desire pregnancy maintain a stable environment, stress-free to the extent that is possible.” See Letter from [REDACTED], NP, dated September 19, 2005, submitted as attachment to I-601 application.

Significant conditions of health constitute an important factor when evaluating a claim of extreme hardship, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Matter of Cervantes-Gonzalez*, *supra*. The record does not reflect that the applicant’s wife suffers from any significant medical condition, or that if she did, treatment would not be available in Sweden. There is no evidence that the applicant and his wife have been found to suffer from fertility problems or referred for any diagnostic tests or treatment. Further, there is no evidence to indicate that even if they require such tests or treatments, these would not be available in Sweden.

Counsel also maintains that the applicant's wife would suffer emotional hardship from being separated from her family here in the United States if she were to move to Sweden. Emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996). The distress caused by the separation of the applicant’s wife from her family, while unfortunate, is the type of disruption and difficulty that normally arises whenever a spouse is removed from the United States.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of

extreme hardship. The AAO therefore finds that the applicant has/has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(h) of the Act.

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. 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.