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

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FILE:

[REDACTED]

Office: PHOENIX, ARIZONA

Date: MAR 01 2005

IN RE:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona. 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 Lebanon who holds a Syrian travel document as a Palestinian. His last place of residence prior to his entry into the United States was the U.A.E., and his citizenship is undetermined. The applicant entered the United States with an F-1 student visa on January 19, 1990. The record indicates that the applicant is married to a U.S. citizen and is the beneficiary of an approved petition for alien relative. The applicant was found to be inadmissible to the United States pursuant to § 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 record reflects that the applicant was convicted of two counts of attempted fraudulent schemes and artifices on May 19, 1993. The applicant seeks a waiver of inadmissibility in order to reside with his wife in the United States.

The district director did not indicate that the applicant had established extreme hardship to his U.S. citizen spouse, and he determined that the applicant did not merit a discretionary grant of the waiver. The application was denied accordingly.

On appeal, counsel asserts that the applicant established that his absence would cause extreme hardship to his wife, in view of her disability and inability to work full time. Counsel also maintains that the district director abused his discretion in finding that the negative aspects of the applicant's situation outweighed the positive. Counsel points out that the applicant already paid back approximately \$10,000 of the \$141,036.58 restitution the court had ordered him to pay to the victims of his crime. Counsel contends that the amount the applicant paid was proportionate to his responsibility for the restitution, given that there were seven other co-defendants. Regarding the latter contention, the AAO points out that it cannot go behind the judicial record and "second guess" the propriety of a court's sentence. In an analogous vein, it is noted that "collateral attacks upon an [applicant's] conviction do not operate to negate the finality of his conviction unless and until the conviction is overturned." *Matter of Max Alejandro Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996). (Citations omitted).

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 . . . is inadmissible.

Section 212(h) states 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)(A) [I]t is established to the satisfaction of the Attorney General that-

(i) [T]he 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.

In 1993 the applicant was convicted of attempted fraudulent schemes and artifices, in violation of Arizona Revised Statutes 13-2310, 701, 702, 801, 812, and 1001. The criminal acts were committed in 1992, which is less than 15 years prior to the adjudication of his adjustment of status application. The applicant is therefore statutorily ineligible for a waiver pursuant to § 212(h)(1)(A) of the Act. He is however, eligible to apply for a waiver of inadmissibility pursuant to § 212(h)(B) of the Act.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the Board held that establishing extreme hardship and eligibility for § 212(h)(1)(B) relief does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) at 12.

In *Matter of Cervantes-Gonzalez, Id.*, 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 (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. 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.

On appeal, counsel states that if the applicant's wife remained in the United States without the applicant, she would be unable to support herself and her children, since she is disabled and unable to work more than a few days a week. The AAO notes that three of the applicant's stepchildren are 21 years old and over, and the youngest stepchild is 17 years old. There is no evidence on the record that the applicant is required to support his three adult stepchildren, or that the applicant's wife has no source of income available to her other than her part-time earnings and the applicant's salary. The evidence does not establish that the applicant's wife would undergo severe financial hardship in the applicant's absence. In addition, the medical documentation on the record does not establish that the applicant's wife requires the applicant's presence in order to conduct her daily living activities.

Counsel also asserts that the applicant's wife would suffer extreme hardship if she relocates to Syria. In a statement dated August 22, 2000, the applicant's wife wrote that the applicant would be imprisoned upon his return to Syria, since he failed to perform military service in that country. She also wrote that she would not be able to obtain a Syrian visa or work permit, that it would be difficult to find a school for her children, and that she would be unable to practice her religion. On August 25, 2000, counsel wrote that the applicant's wife would be in life-threatening danger should she go to Syria. The record contains no documentation to substantiate any of these claims.

The record does not document how long, if ever, the applicant lived in Syria. The record does not demonstrate that the applicant would be required to travel to Syria upon his removal from the United States. There is no evidence that the applicant was required to perform military service in Syria, that he failed to do so, or that he would be subject to imprisonment upon entering Syria. The applicant's family has lived in the U.A.E. for an indeterminate length of time, and the applicant's status in that country is unknown.

The record also does not demonstrate that the applicant's wife practices any religion, that she would be unable to practice her religion in Syria, or that she would be in physical danger in that country. There is no evidence that she would be precluded from obtaining a visa or work permit. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Additionally, the statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse and stepchildren would suffer hardship that was unusual or beyond that which would normally be expected upon removal. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 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.