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FILE: [REDACTED]

Office: PHOENIX, AZ Date: **DEC 08 2006**

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. § 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Phoenix, Arizona denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, Aesook I [REDACTED] is a native and citizen of Korea who first entered the United States on December 28, 1994, as an F-1 student, and applied to adjust her status to permanent resident on May 19, 1998. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i), for having been convicted of a crime involving moral turpitude. In order to remain in the United States with her U.S. citizen (USC) husband, [REDACTED] the applicant seeks a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h).

The record reflects that Mrs. [REDACTED] was convicted of shoplifting on two separate occasions: April 19, 2000 and March 17, 2004. As a result, the district director found the applicant to be inadmissible to the United States. *District Director's decision*, dated May 13, 2005. The district director also found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Id.*

On appeal, counsel for the applicant submits a brief and additional documentation. The record includes the following: a psychiatric evaluation of the applicant by Dr. [REDACTED], dated May 16, 2005; a letter from Dr. [REDACTED] dated June 22, 2005; a hardship statement from Mr. [REDACTED], dated March 6, 2005; a letter from Mr. [REDACTED] employer, dated March 9, 2005; a letter from Mrs. [REDACTED]'s friend, Joie Knapp, dated March 23, 2005; an affidavit from Dr. [REDACTED], clinical psychologist, dated March 21, 2005; Mr. [REDACTED] medical records; the 2003 U.S State Department Country Reports on Human Rights Practices for Korea; a statement from Mrs. [REDACTED], not dated; a letter from Mr. and Mrs. [REDACTED] church, dated March 22, 2005; a letter from the [REDACTED]'s friend, [REDACTED], dated March 15, 2005; Mrs. [REDACTED] criminal dispositions; and tax returns from 2001 to 2003. The AAO reviewed the entire record in arriving at a decision on the appeal.

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) of the Act provides, in pertinent part, that:

- (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) . . . 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 [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.

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed *only one crime* if-

....  
(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

(Emphasis added).

The exception at 212(a)(2)(A)(ii) applies to an alien who committed only one crime involving moral turpitude. The record reflects that Mrs. [REDACTED] was convicted of shoplifting on two separate occasions. Therefore she does not qualify for the exception and is inadmissible for having been convicted of a crime involving moral turpitude.

A section 212(h) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on the USC or lawful permanent resident spouse, parent or son or daughter of the applicant. Hardship to the applicant is only considered insofar as it may affect her qualifying relative, in this case, her USC husband.

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 in 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 evidence submitted is insufficient to show that denial of Mrs. [REDACTED] Form-601 would result in extreme hardship to her U.S. citizen husband. The applicant's husband, Mr. [REDACTED] asserts that he will suffer extreme hardship if he moves to Korea to avoid separation from Mrs. [REDACTED] because of his health. Although the documentation submitted shows that Mr. [REDACTED] has high blood pressure, diabetes, and suffered a heart attack in 2000, counsel failed to submit documentation to show that suitable medical care for Mr. [REDACTED] would be prohibitively expensive or unavailable in Korea. There is no documentation to

demonstrate that his medical conditions prohibit him from moving to Korea. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 asserts that it is common knowledge that a person is at greater risk of having a heart attack if they have had one in the past, yet submits no objective evidence to support this assertion and does not explain why Mr. [REDACTED] would suffer anymore if he had a heart attack in Korea than if he had one in the United States. *Id.* Counsel asserts that Mr. [REDACTED] cannot be separated from Mrs. [REDACTED] because the only reason he is doing well physically is because his wife takes care of him. No documentation from a treating physician indicates the extent to which Mrs. [REDACTED] cares for her husband's medical needs or that separation from her would lead Mr. [REDACTED] to suffer extreme hardship. 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 Obaighena*, 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).

Mr. [REDACTED] asserts that there is no work for him in Korea. While existing economic conditions in Korea are considerations in determining extreme hardship, the applicant has not submitted documentation about these conditions or evidence of how these conditions would affect her husband. The applicant does not submit documentation demonstrating why someone in her husband's situation would be unable to find employment in Korea. *Matter of Soffici*. Counsel points to the 2003 State Department Report on Korea, asserting that individuals with disabilities are discriminated against in Korea and that Mr. [REDACTED] will be discriminated against because being 61 years old is considered a disability in Korea. The documentation does not support this assertion. The State Department Report refers to individuals with physical disabilities, such as those in wheel chairs, and the Korean government's attempts to install more wheelchair accessible ramps in public places. The Report refers to discrimination against women and people with physical disabilities but does not list age as a basis for discrimination in Korea. No further documentation was submitted relating to age discrimination in Korea. *Matter of Obaighena*.

Other than statements from the applicant's husband, in which he notes his love for and attachment to his wife, (*See Mr. [REDACTED] statement*), no objective evidence was submitted to supplement Mr. [REDACTED] claim of extreme emotional hardship. Counsel suggests that the applicant's husband will experience significant emotional hardship if he is separated from the applicant. The applicant submits an affidavit from a clinical psychologist that discusses her husband's mental health. *See affidavit of [REDACTED]* The AAO reviewed this affidavit but can give little weight to it. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on a single interview between Mr. [REDACTED] and Mrs. [REDACTED] and the therapist and does not represent treatment for a mental health disorder. The applicant has provided no evidence that her spouse received or required follow-up care from a mental health professional. While the evaluation is helpful in providing an understanding of the background and challenges of the applicant's husband, it does not establish that, should the applicant not be admitted to the United States, his husband will suffer emotional consequences beyond those ordinarily experienced by families of those who are deemed inadmissible.

Although it is clear that her husband would suffer if she relocated to Korea and he remains in the United States, or if he leaves his job and goes to live in Korea, they face the same decision that confronts others in their situation – the decision whether to remain in the United States or relocate to avoid separation – and this

does not amount to extreme hardship under the law as it exists today. Based on the existing record, the effect of separation or relocation on Mr. [REDACTED], while difficult, would not rise above what individuals separated as a result of inadmissibility typically experience and does meet the legal standard established by Congress and subsequent case law interpreting the meaning of extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband faces extreme hardship if the applicant is refused admission. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), describing extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation; and *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), holding that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of hardship experienced by the families of most individuals who are deported.

In this case, though the applicant's qualifying relative will endure hardship if he remains in the United States separated from the applicant, their situation, based on the documentation in the record, does not rise to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(h) of the Act, 8 U.S.C. § 1186(h). Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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 rests 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.