



U.S. Citizenship  
and Immigration  
Services

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
**PUBLIC COPY**

H2

[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES, CA

Date: JUN 07 2006

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found 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 the spouse of a citizen of the United States and the beneficiary of an approved Petition for Alien Relative (Form I-130). He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of District Director*, dated October 25, 2004.

On appeal, counsel states that the applicant's spouse will suffer extreme hardship if the applicant's waiver request is not granted. Counsel contends that the hardship that the applicant's spouse will experience is above and beyond mere loss of employment, separation from her spouse and the inability to maintain her present standard of living. *Form I-290B*, dated November 23, 2004. In support of these assertions, counsel submits a brief and a letter from a nonprofit mental health services center. The entire record was reviewed and considered in rendering a decision on the applicant's appeal.

The record reflects that, on January 6, 1998, the applicant was convicted of Perjury in the Superior Court of Los Angeles, California. The applicant was sentenced to 365 days in jail and placed on probation for a period of three years. On December 13, 1999, the applicant's probation order was terminated.

Section 212(a)(2)(A) 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-
  - (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

- (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (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 . . .

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) of the Act. 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, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include 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.

The record indicates that the applicant was arrested at any unidentified time in 2001 by immigration officers while crossing the border. *Declaration of* [REDACTED] dated September 20, 2004. The AAO notes that although the decision of the district director fails to address this issue, if the applicant departed from the country after accruing unlawful presence, the applicant may also be subject to inadmissibility provisions outlined under section 212(a)(9)(B)(i) of the Act.

On appeal, counsel incorporates by reference all facts, arguments, and documents previously submitted to Citizenship and Immigration Services. *Statement in Support of AAO Appeal of Denial of I-601 Waiver for* [REDACTED], dated December 14, 2004. The AAO notes that the decision of the district director fails to address the brief and supporting documents previously submitted by counsel for consideration in adjudicating the waiver application. Counsel previously contended that the applicant's spouse would suffer extreme hardship as a result of relocation to Mexico in order to remain with the applicant because she has lived in the United States her entire life and her entire family resides in the United States. *I-601 Waiver for* [REDACTED] dated October 8, 2004. Counsel states that "[l]eaving the United States would be too much for Mrs. [REDACTED] to bear." *Id.* Counsel further indicates that it would be difficult for the applicant's spouse to find employment in Mexico. *Id.* The record fails to contain evidence to substantiate the assertion that the applicant's spouse would encounter difficulty in obtaining employment in Mexico. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Moreover, the record fails to establish that extreme hardship would be imposed on the applicant's spouse as a result of remaining in the United States in the absence of the applicant in order to maintain proximity to family members and residency in her country of birth. Counsel contends that the applicant's spouse has developed a problem with depression as a result of the applicant's inadmissibility to the United States. *Statement in Support of AAO Appeal of Denial of I-601 Waiver for* [REDACTED] at 1. Counsel

submits a letter from a mental health professional who has “worked with [the applicant’s spouse] and her family for the past 3 years.” *Letter from [REDACTED]* dated November 17, 2004. The writing therapist indicates that the symptoms experienced by the applicant’s spouse have been magnified due to the immigration situation of the applicant. *Id.* The statements of counsel and the writing therapist are contradictory. While counsel contends that the applicant’s spouse has developed depression as a result of the applicant’s inadmissibility, the submitted letter reflects a period of treatment that dates to before the filing of the Form I-601 waiver application. Further, the submitted letter from a therapist refers to treatment of the applicant’s spouse and “her family.” The record does not reflect which family members of the applicant’s spouse received counseling with the applicant’s spouse and for what reason. In the absence of clarifying information that fully explains the mental condition of the applicant’s spouse including the credentials of the evaluating therapist and the effectiveness of any prescribed medications, the AAO is unable to render a finding of extreme hardship based on the psychological suffering of the applicant’s spouse. While any depression endured by the applicant’s spouse is unfortunate, the record fails to offer the requisite evidence to establish extreme hardship.

The AAO acknowledges counsel’s assertion that the applicant’s spouse is unable to support herself financially in the absence of the applicant. *I-601 Waiver for [REDACTED]* at 3. However, the record fails to offer evidence establishing that the applicant’s spouse would be unable to maintain her employment and income in the absence of the applicant.

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. The AAO recognizes that the applicant’s spouse would likely endure hardship as a result of separation from the applicant. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant’s spouse caused by the applicant’s inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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.