



U.S. Citizenship
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Services

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FILE:

[Redacted]

Office: LOS ANGELES

Date: JUN 20 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, 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 pursuant to 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 crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with her permanent resident husband and U.S. citizen children.

The district director concluded 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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated December 3, 2004.

On appeal, counsel for the applicant contends that the applicant's husband and children will experience extreme hardship if the applicant is compelled to depart the United States, and thus the application should be approved. *Brief from Counsel*, dated July 30, 2003.

The record contains a brief from counsel; an evaluation of the applicant's husband by a licensed psychologist; statements from the applicant, the applicant's husband, the applicant's children, the applicant's sister, and the applicant's brother-in-law; documentation of the applicant's criminal history; a copy of the birth certificates for the applicant and her children; a copy of the applicant's marriage certificate; a copy of the applicant's husband's permanent resident card; a copy of the applicant's passport; a Form I-864, Affidavit of Support, executed by the applicant's husband on her behalf; documentation verifying the employment of the applicant and her husband; copies of tax filings; a copy of the applicant's lease for residential property; copies of photographs of the applicant and her family members, and; documentation of the applicant's professional memberships and credentials. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2) of the Act states in pertinent part, that:

- (A) (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.
 - (ii) Exceptions. – 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 . . . 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).

- (B) Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more 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) [or] (B) . . . of subsection (a)(2)
. . . if -

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

- (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 [now the Secretary of Homeland Security (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

The record reflects that the applicant has been convicted of three crimes. Specifically, on May 10, 1996, the applicant was convicted of petty theft in the County Court of Potter County, Texas. On May 5, 1998, the applicant was convicted of violating section 484(A) of the California Penal Code (petty theft) in the Municipal Court for Los Angeles. On December 19, 2000, the applicant was convicted of violating section 666 of the California Penal Code (petty theft with priors) in the Municipal Court for Los Angeles. Based on these convictions, the district director found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act for committing a crime involving moral turpitude.

There is ample precedent to support that petty theft under section 484(A) of the California Penal Code constitutes a crime involving moral turpitude. *See, e.g., United States v. Esparza-Ponce*, 193 F.3d 1133, 1135-37 (9th Cir. 1999); *Morales-Alvarado*, 655 F.2d 172, 174 (9th Cir. 1981); *United States v. Villa-Fabela*, 882 F.2d 434, 440 (9th Cir.

1989), *overruled on other grounds*, Proa-Tovar, 975 F.2d 592, 595 (en banc)(9th Cir. 1992); *United States v. Lopez-Vasquez*, 1 F.3d 751, 755 n.8 (9th Cir. 1993); *In re De La Nues*, 18 I&N Dec. 140, 145 (BIA 1981); *In re Scarpulla*, 15 I&N Dec. 139, 140-41 (BIA 1974). In *United States v. Esparza-Ponce*, the Ninth Circuit stated that, “In addition to . . . statements in our own cases, every other circuit that has addressed the question in the context of the immigration laws has concluded that petty theft is a crime involving moral turpitude for purposes of those laws.” *United States v. Esparza-Ponce*, 193 F.3d at 1135-37(citations omitted). Accordingly, as the applicant has been convicted of theft under section 484(A) of the California Penal Code, she has been convicted of a crime involving moral turpitude as contemplated by section 212(a)(2)(A)(i)(I) of the Act.

The AAO notes that section 212(h)(1)(B) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. Hardship the applicant himself experiences due to his inadmissibility is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant’s permanent resident husband and U.S. citizen children. *Id.* If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) 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.

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).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), held that, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and that, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant’s husband and children would possibly remain in the United States if the applicant departs. Separation of family will therefore be carefully considered in the assessment of hardship factors in the present case.

The applicant stated that she, her husband, and her children share a close relationship, and they do not wish to be separated. *Statement from Applicant Submitted with Form I-601 Application*. The applicant’s husband provided that his family will “fall apart” and his children will be “devastated” if the applicant is compelled to depart the United States. *Statement from Applicant’s Husband Submitted with Form I-601 Application*. The applicant’s husband stated that the applicant contributes greatly to the well-being of their children, and that she

serves as the head of the family. *Id.* The applicant's children both indicated that the applicant takes good care of them, and that they do not wish to be separated from her. *Statements from Applicant's Children Submitted with Form I-601 Application.* The applicant's son further stated that he does not want to move to Mexico. *Id.* Counsel stated that U.S. immigration policy emphasizes maintaining family unity, and that requiring the applicant to separate from her husband and children after a lengthy marriage is unreasonable. *Brief from Counsel* at 5.

The applicant provides a written psychological evaluation of her, her husband, and her children that presents the findings of [REDACTED] after interviews and tests conducted on December 7, 2004. Dr. [REDACTED] reports her observations that the applicant's husband and children are all experiencing depression and anxiety, which will only be exacerbated if the applicant's waiver application is denied. *Report from [REDACTED]* dated December 7, 2004. [REDACTED] relayed information regarding an accident that left the applicant's daughter severely burned at the age of 2. [REDACTED] stated that the applicant's daughter has residual psychological trauma due to the accident, and that she will require surgery later in life. *Id.*

Counsel asserted that the applicant is the financial provider for her husband and children, and that they rely on her completely for economic support. *Id.* at 2. Counsel stated that the applicant's husband will suffer substantial economic hardship whether he relocates to Mexico or remains in the United States. *Id.* at 3.

The applicant's sister stated that she shares a close relationship with the applicant, and that she will experience emotional hardship if the applicant departs the United States. *Statement from Applicant's Sister Submitted with Form I-601 Application.* Counsel further observed that the applicant's sister will endure hardship if the applicant's waiver application is denied. *Brief from Counsel* at 4. Counsel further indicated that violence against women is prevalent in Mexico, and that the applicant would be at risk of harm should she return there. *Id.* at 3.

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if she is prohibited from remaining in the United States. The evidence of record contains explanations of hardships that the applicant and her sister will endure if the applicant departs. However, hardship to the applicant or her sister is not a relevant concern in the present matter. Section 212(h)(1)(B) of the Act. While the AAO acknowledges that the applicant and her sister will bear significant consequences if the applicant's waiver application is denied, only hardship to the applicant's husband or children may be properly considered in this section 212(h)(1)(B) waiver proceeding.

The applicant has failed to show that her husband or children will suffer extreme hardship should she be prohibited from remaining in the United States. Counsel asserts that the applicant is the income earner for their household, and that the applicant's husband and children rely on her for financial support. However, the record clearly reflects that the applicant's husband works and earns a significant income. For example, the applicant's husband filed a Form I-864, Affidavit of Support, on behalf of the applicant in which he stated that he earned \$35,624 in 2001. The record contains tax and wage documentation for the applicant's husband that corroborates his claimed salary. It is noted that the record does not contain a clear explanation or evidence of the applicant's household's expenses. Thus, the AAO lacks sufficient information or documentation to assess the economic effect that applicant's absence would have on her husband and children. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The 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). As the record shows that the applicant's husband is capable of working and earning income about the poverty line, the applicant has failed to show that he will be unable to meet his and his children's financial needs in the applicant's absence.

The applicant's husband and children expressed that they will experience emotional hardship if the applicant departs the United States. They each provided that their family shares a close bond, and that the applicant contributes greatly to the household and their care. Counsel highlights that the applicant and her husband have been married for a lengthy period of time. Yet, the applicant and her family members have not described factors that render their emotional hardship greater than that typically expected of the family members of those deemed inadmissible.

The AAO has given careful consideration of the report from [REDACTED]. However, the single evaluation is of limited use, as it was conducted for the purpose of this proceeding, and does not represent treatment of the applicant's family members for a mental health disorders. The applicant has provided no evidence that her husband or children received or required follow-up evaluation from a mental health professional. While the evaluation is helpful in providing an understanding of the background and challenges of the applicant's husband and children, it does not show that, should the applicant depart the United States, her husband or children will suffer emotional consequences beyond those ordinarily experienced by families of those who are deported.

U.S. court decisions have 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.

It is noted that the applicant's husband and children may relocate to Mexico with the applicant if they choose. The applicant has not fully explained the extent of her husband's experience with Mexico, yet the record reflects that the applicant's husband is from Laos and he does not speak Spanish. [REDACTED] reported that the applicant's husband expressed that he could not go to Mexico. The AAO acknowledges that residing in an unfamiliar country poses significant challenges, such as adapting to a new language and culture. It is evident that the applicant's husband would necessarily be required to relinquish his current employment, yet the record does not contain documentation or explanation to reflect what opportunities he may find in Mexico.

The report from [REDACTED] further provides that the Spanish language skills of the applicant's children are limited. In *Matter of Kao and Lin*, the BIA determined that the appellant's children would suffer

extreme hardship if compelled to relocate to Taiwan, largely due to the fact that they lacked proficiency in the Chinese language. *Matter of Kao and Lin*, 23 I&N Dec. 45, 49-50 (BIA 2001). [REDACTED] report implies that the applicant's children would in fact relocate with the applicant should the applicant's waiver application be denied. However, the present matter can be distinguished from *Matter of Kao and Lin*. In *Matter of Kao and Lin*, the children in question were faced with the possible deportation of both of their parents, thus they would be left with no parent in the United States rendering their relocation to Taiwan likely. In the present matter, the applicant's husband may remain in the United States if he chooses. Accordingly, the applicant and her husband may choose to have their children remain in the United States under his care.

The AAO appreciates that deciding whether to separate the applicant's children from the applicant presents a difficult choice. It is further understood that the applicant's husband and children would experience significant emotional and economic challenges should they choose to depart the United States. Yet, as permanent resident and U.S. citizens, the applicant's husband and children are not required to depart the United States due to the applicant's inadmissibility.

[REDACTED] references an accident in which the applicant's daughter sustained serious burns, requiring future surgery. The AAO sympathizes with this experience that has undoubtedly caused significant emotional consequences for the applicant's entire family. However, the applicant has not submitted documentation of the accident or her daughter's prior medical treatment, or an assessment by a medical professional of whether, when, and what surgery her daughter may require in the future. Thus, the AAO is unable to assess whether the applicant's daughter suffers from medical problems that cannot be properly treated in Mexico. Again, 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. at 165.

Thus, the applicant has not provided sufficient explanation or documentation to show that her husband or children would experience extreme hardship should they choose to relocate to Mexico to maintain family unity. It further noted that, as a permanent resident and U.S. citizens, the applicant's husband and children are not required to reside outside the United States as a result of the applicant's inadmissibility.

Based on the foregoing, the applicant has not shown that, should she be prohibited from remaining in the United States, her family members will suffer hardship that is unusual or beyond that which would normally be expected upon deportation. Thus, the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband or children 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 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 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.