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U.S. Citizenship  
and Immigration  
Services

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H12

FILE: [REDACTED] Office: SAN ANTONIO, TX

Date: JUL 26 2007

IN RE: Applicant: [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 Interim District Director, San Antonio, Texas and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of Mexico. On May 30, 2003, the applicant filed Form I-601, Application for Waiver of Ground of Excludability; the grounds for inadmissibility, as outlined on Form I-601, were "...crimes involving moral turpitude." The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his four U.S. citizen children and his lawful permanent resident mother.

The district director concluded as follows: "Section 212(a)(2)(B) of the Immigration and Nationality Act...provides for the inadmissibility of any client 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. A review of the evidence of record shows that you have an extensive and long-standing history of criminal and substance abuse behavior...in review of the foregoing, it is determined that you remain statutorily inadmissible from the United States without chance of a waiver..." The Application for Waiver of Grounds of Excludability (Form I-601) was denied accordingly. *Decision of the Interim District Director*, dated October 27, 2003.

Based on a thorough analysis of the record, it has not been established that the applicant has been convicted of two or more offenses, contrary to the interim district director's statements in her decision. Although the record details a lengthy arrest record for the applicant, arrests do not always lead to convictions. In this case, the record indicates only one conviction, with respect to a vehicle theft incident in February 1995. Moreover, even if a finding was made by the AAO that the applicant had two or more convictions, the interim district director erred in her conclusion that the applicant would be ineligible for a waiver.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) failed to properly consider the appropriate grounds of inadmissibility, as discussed above, and the extreme hardship factors set forth in the applicant's case, as required by legal precedent decisions. In support of the waiver request, counsel submits a brief and supporting legal memo, dated November 19, 2003; a notarized letter from the applicant, dated October 24, 2003; a notarized letter from the applicant's mother, dated October 27, 2003, and documentation of her lawful permanent resident status; medical records and corresponding financial records on the applicant's mother's behalf; evidence of status for the applicant's brothers and sister; a notarized support letter from the applicant's sister, a U.S. citizen; community support letters on behalf of the applicant; photographs of the applicant's U.S. citizen children; and school and medical records on behalf of the applicant's four children. The entire record was reviewed and considered in rendering this decision.

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

(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.

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

- (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 . . . .

A section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the inadmissibility bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son or daughter of the applicant. Hardship the applicant himself experiences upon deportation is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's four U.S. citizen children and lawful permanent resident mother. 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).

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 O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) the BIA held that:

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.

To begin, counsel asserts that the applicant "...provides financial assistance to his lawful permanent resident mother who is under medical care." *Brief in Appeal of I-601 Waiver Denial*, dated November 19, 2003. Counsel provides no evidence of what financial support the applicant provides to his mother, nor what hardship the applicant's mother would face without the applicant to assist her financially. 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).

The applicant's mother states that without the applicant "...I can not do anything...I am very sick and can not drive. He [the applicant] takes me to the grocery store and to get my medicine...[he] also takes me to the doctor to get check-ups. I don't know what I would do if he was not here with me. I have friends but, they work they do not have time to take care of me. I don't think I could go on living without him. I can't take care of myself that is why I need him here with me..." *Notarized letter from* [REDACTED] dated October 27, 2003. While the applicant's mother may need to make other arrangements with respect to her care, counsel has not established that any new arrangements for medical, emotional and financial care would cause extreme hardship to the applicant's mother.

In addition to failing to establish what, if any, financial support the applicant provides to his mother, no specific evidence and corroborating documentation is provided that details exactly what assistance the applicant's children need from the applicant and what hardship the applicant's children would face without the applicant to assist them. The applicant's sister states that the applicant "...provides everything for his kids..." *Notarized letter from* [REDACTED], dated October 23, 2003. 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)).

[REDACTED] Center Director for St. Albert Head Start states that the applicant "...has been a parent at St. Albert Head Start for the past three years. [REDACTED] [the applicant] has always been a caring parent and always involved in his son[']s education. [REDACTED] brings his son to school on a daily basis and has always shown great concern for the well being of his children. [REDACTED] has demonstrated on various occasions...that he is a very responsible parent..." *Notarized letter from* [REDACTED] *Center Director, St. Albert Head Start*, dated October 23, 2003. The letter provided by [REDACTED] establishes that the applicant plays an important role in his son's life, based on her observations; however, the record fails to establish what extreme hardship the children would face without the applicant's presence. Moreover, school records and general medical records do not provide insight to the AAO regarding the applicant's specific involvement in the children's lives, and the hardship that would be encountered by the children without the applicant's presence.

Finally, the AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she relocates with the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request. In this case, counsel has not asserted any reasons why the applicant's children and/or mother are unable to accompany the applicant to Mexico, or any other country of their choosing. As such, 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 children and lawful permanent resident mother would suffer extreme hardship if he were removed from the United States, and moreover, the applicant has failed to show that his U.S. citizen children and lawful permanent resident mother would suffer extreme hardship were they to relocate to another country.

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 section 212(i) 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.