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

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[REDACTED]

FILE:

Office: LOS ANGELES, CA

Date: SEP 20 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, a citizen of Mexico, was found 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 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 U.S. citizen spouse and daughters.

The district director concluded that that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated August 31, 2005.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) failed to properly consider the extreme hardship factors set forth in the applicant's case, as required by legal precedent decisions. In support of the appeal, counsel submits a brief, dated October 25, 2005; a copy of the applicant's spouse's naturalization certificate; a copy of the applicant's daughter's U.S. birth certificate; and a copy of the applicant's step-daughter's U.S. birth certificate. The entire record was reviewed and considered in rendering this decision.

Regarding the applicant's grounds of inadmissibility, the record reflects the commission of crimes involving moral turpitude. On January 31, 1995, the applicant was convicted of burglary, a violation of section 459 of the California Penal Code. In addition, on May 4, 1992, the applicant was convicted of a violation of section 484F(2) of the California Penal Code for providing a forged name on a credit card.¹ The District Director found the applicant inadmissible based upon the applicant's commission of these crimes involving moral turpitude. As these crimes were committed after the applicant's eighteenth birthday, the district director correctly found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Section 212(a)(2)(A)(i)(I) 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.

¹ The AAO notes that the applicant does not dispute the district director's finding that these offenses constituted crimes involving moral turpitude.

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 . . .²

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 U.S. citizen spouse and two daughters. 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.

The Ninth Circuit Court of Appeals has stated that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also 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." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from

² The AAO notes that section 212(h) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, CIS must then assess whether to exercise discretion

family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

To begin, counsel asserts that “...forced family separation will have many repercussions for the entire family. The children are very close to their father. The applicant and his wife spend much time with the children. The applicant is very involved with [REDACTED] education. He takes her and picks her up from school. He is also very involved in the child’s after school activities. Further, the applicant has raised his step-daughter since the age of 11. He has guided her through many situations and given her the advice of a real father. Separating the father from the family will cause his youngest daughter to grow up in a single family household...” *Brief in Appeal of I-601 Waiver Denial*, dated October 25, 2005.

Pursuant to the applicant’s spouse’s declaration, the applicant has been a “...great role model to my 18-year-old daughter. My husband [the applicant] has helped me raise my daughter since she was 11 years old. He has been a great person. He has never attempted to impose himself as a father to her instead he has told her that he will be a friend whenever she needs him. I am certain that my daughter greatly appreciates him...” *Declaration of [REDACTED]* dated July 31, 2003. Although the documentation provided confirms that the applicant has played an important role in his step-daughter’s life, the record indicates that the step-daughter was over twenty-one years old at the time the instant appeal was filed and is thus an adult. Counsel has not established that any new arrangements for the applicant’s adult step-daughter’s emotional and financial care, were the applicant removed, would cause her extreme hardship. 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)).

In addition, the record fails to establish what extreme hardship the applicant’s child, age five at the time the appeal was filed, would face without the applicant’s presence. While the applicant’s spouse may need to make other arrangements with respect to the child’s care, counsel has not established that any new arrangements for the child’s medical, emotional and financial care would cause extreme hardship to the applicant’s spouse and/or child.

Counsel asserts that the applicant’s spouse will “...suffer an extreme hardship knowing that she will be separated from her spouse after 9 years of marriage. Separating from her husband will cause [REDACTED] [the applicant’s spouse] great depression and frustration. She will be depressed because of not being able to spend and share quality time with her husband. She will be frustrated because she will not be able to do anything to unite her family. She will also be frustrated because she will see her child grow up without a father. The combination of depression and frustration will cause extreme hardship...” *Supra* at 4. No documentation has been provided from a mental health professional to substantiate counsel’s claim that the applicant’s spouse will suffer from depression if the applicant were removed from the United States. 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 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).

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

Counsel states that the applicant's spouse and daughters will suffer financial hardship if the applicant were removed. Counsel asserts that the applicant's removal "...will require [redacted] to work more to supplement the lost income to care for her daughter and herself. [redacted] will suffer extreme hardship because a loss of income will affect the care that her child receives..." *Supra* at 5. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

In this case, counsel has provided no evidence with the appeal that establishes the applicant's current financial contributions to the household, and thus has failed to show that the applicant's absence, and the subsequent loss of the applicant's income, will cause extreme financial hardship to the applicant's spouse and daughters. Moreover, counsel does not explain why the applicant, were he removed, would be unable to obtain employment in Mexico and assist in supporting his spouse and daughters in the United States while residing abroad. Counsel's statements regarding the high unemployment rate in Mexico are general in nature and are unsubstantiated.

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, no evidence has been provided to explain why the applicant's spouse and daughters are unable to accompany the applicant to Mexico, or any other country of their choosing. Counsel states that "... [REDACTED] is not in a position to leave the United States. [REDACTED] is a United States citizen and has established her life in this country." *Supra* at 4. Counsel's assertion, without supporting documentation to establish the extreme hardship the applicant's spouse and/or daughters would face were they to accompany the applicant to Mexico, does not suffice to show extreme hardship.

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 spouse and daughters 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 spouse and daughters 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(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.