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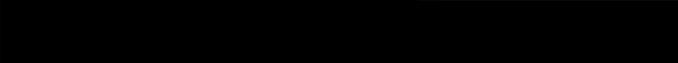
**U.S. Citizenship
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Services**

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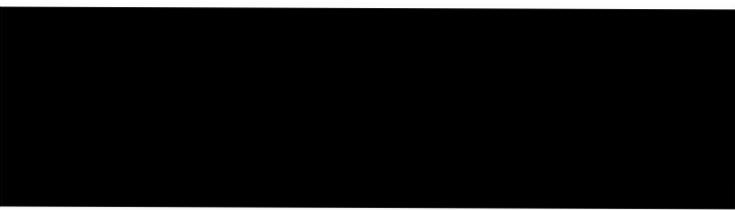
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FILE  Office: PHOENIX, ARIZONA Date: **APR 15 2008**

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h)

ON BEHALF OF PETITIONER:



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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona, 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 entered the United States without inspection in April 1994. He 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 two crimes involving moral turpitude (theft). The record indicates that the applicant is married to a U.S. citizen and that he is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility in order to reside with his wife in the United States.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of District Director*, dated April 7, 2006.

On appeal, counsel asserts that Citizenship and Immigration Services (“CIS”) failed to thoroughly analyze the facts and evidence in the case, including evidence of extreme physical, financial, and emotional hardship to the applicant’s wife if the applicant is removed from the United States. Specifically, counsel states that the applicant’s wife has strong family ties in the United States and none in Mexico, suffers from chronic medical conditions that prevent her from working and cause her to rely on the applicant for financial support, and would not have access to adequate medical care in Mexico. *See Brief in Support of Appeal* at 4-9.

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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) states in pertinent part:

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-

(1)(A) [I]t is established to the satisfaction of the Attorney General that-

(i) [T]he 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

(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 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 applicant was convicted of theft, a crime involving moral turpitude, in 1995 and again on September 21, 2000. These convictions render the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Since less than 15 years have passed since the criminal activity for which he was convicted, the applicant is statutorily ineligible for a waiver pursuant to section 212(h)(1)(A) of the Act. He is, however, eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(1)(B) 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.

U.S. court decisions have additionally 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a thirty-three year-old native and citizen of Mexico who has resided in the United States since April 1994. He married his wife, a fifty-six year-old U.S. Citizen, on December 12, 1998. Counsel submitted documentation indicating that the applicant and his wife own their home in Phoenix, Arizona and that the applicant's wife suffers from various medical conditions that prevent her from working. According to a declaration submitted by the applicant's wife, she has four adult children who live near her and the applicant, and the applicant is close to her children and her five-year-old granddaughter.

The district director concluded that the applicant had failed to demonstrate that his wife would suffer extreme hardship if the applicant were deported. He found that although she might lose their house without the applicant because she cannot work, financial difficulty alone would not amount to extreme hardship. The

district director further stated that the applicant had not submitted evidence establishing that the his wife could not obtain adequate care abroad for her medical conditions, and concluded that he had failed to show she would suffer hardship over and above the normal economic and social disruptions caused by the deportation of a family member. *See Decision of the District Director* at 3.

Counsel asserts that if the applicant were deported to Mexico and his wife relocated there, she would suffer extreme hardship because she would be separated from her entire family in the United States, where she has lived her entire life. *See Brief in Support of Appeal* at 5. He further states that she will suffer extreme hardship if she relocates to Mexico with the applicant, and that as a U.S. Citizen, she is "entitled to live and prosper in this country with her family." *Brief* at 5. Counsel also asserts that CIS did not consider the economic and social conditions in Mexico, and that Mexico "is perpetually in economic crisis and . . . cannot provide employment to its own citizens much less non-citizens like [REDACTED]" *Brief* at 6. Counsel refers to the U.S. State Department *Country Condition Report for Mexico* from 2000 to support these assertions, but did not submit any evidence on the economic situation in Mexico. 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). Further, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. Further, although the applicant's wife would be separated from her family members in the United States, there is nothing on the record to indicate that the emotional effects of this separation would be more serious than that normally experienced by family members as a result of deportation or exclusion. The emotional and financial hardship the applicant's wife would suffer, while unfortunate, appears to be the type of hardship that family members would normally suffer as a result of deportation or exclusion. 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).

Counsel states that the applicant's wife will be unable to receive even basic medical attention for her medical conditions, which include osteoarthritis, degenerative disc disease, diabetes, and hypertension. *See letter from [REDACTED], dated February 22, 2006 and note from physician's office, dated February 21, 2006.* Counsel further states that the applicant's wife is covered by medical insurance in the United States, but would have no access in Mexico to the medical attention she needs. Counsel states, "Mexico's health system is virtually non-existent for most families because they simply cannot afford to see a doctor or visit a hospital," and that it is an "obvious fact that Mexico does not provide medical insurance to Non-Citizens just as the U.S. does not provide medical insurance to Non-Citizens." *Brief* at 9. There is no evidence on the record concerning the applicant's medical insurance in the United States or access to health care in Mexico, and the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena, supra; Matter of Laureano, supra; Matter of Ramirez-Sanchez, supra.*

Counsel additionally asserts that if the applicant's wife remained in the United States, she would be "left alone to care for herself with all her medical ailments," and that being left alone without the financial and emotional support of her husband would constitute extreme hardship. *Brief* at 8. Although there is evidence the applicant's wife is not working and is financially supported by the applicant, the applicant's wife also has four adult children with whom she appears to have a close relationship. There is no information on the record

to indicate that her children are unwilling or unable to provide her with financial support or assist with her medical care if the applicant is removed. Further, the evidence does not establish that any emotional hardship the applicant's wife would suffer if the applicant is removed would be more serious than the type of hardship an individual would normally suffer when faced with the prospect of separation from her spouse. Although the depth of her concern over the applicant's immigration status is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation always results in considerable hardship to individuals and families. But 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, exists.

The emotional and financial hardship the applicant's wife would suffer appears to be the type of hardship that family members would normally suffer as a result of deportation or exclusion. 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. The court in *Hassan v. INS*, *supra*, further held 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.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(h) of the Act.

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.