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U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **JUN 02 2008**

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 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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Bolivia. She 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 (petit theft). The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks 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 her spouse.

The service center 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 Service Center Director* dated April 6, 2006.

On appeal, counsel asserts that Citizenship and Immigration Services ("CIS") should grant the applicant's waiver application because refusing the applicant admission to the United States would result in extreme hardship to the applicant's U.S. Citizen husband. Specifically, counsel claims that the applicant's husband would suffer extreme hardship if he relocated to Bolivia with the applicant or remained in the United States without her and relies on the Board of Immigration Appeals (BIA) decision in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999). Counsel states that the applicant's husband has strong family ties in the United States and none in Bolivia and further asserts that the political and economic conditions in Bolivia would result in hardship to the applicant's husband. Further, counsel states that the applicant's husband would suffer physical hardship due to his medical condition and would suffer financially if he liquidates his business and departs the United States. Lastly, counsel asserts that the waiver should be granted to preserve family unity and states that separation from the applicant would cause her husband to suffer emotional hardship. Counsel submitted additional evidence with the appeal, including documentation concerning human rights practices and access to medical care in Bolivia and the applicant's husband's medical records. The entire record was reviewed and considered in arriving at a decision on the appeal.

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 petit theft on March 1, 1995 in Paramus, New Jersey and on November 3, 2003 in Alameda County, California. The applicant's second conviction was for a shoplifting offense that occurred on October 8, 1998. See *Alameda County Local Criminal History Check* dated November 25, 2003. Since less than 15 years has passed since the criminal activity for which the applicant was convicted, the applicant is statutorily ineligible for a waiver pursuant to section 212(h)(1)(A) of the Act. She 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 *Hassan v. INS*, *supra*, the court 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. Moreover, the U.S. Supreme Court additionally 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.

The record reflects that the applicant is a thirty-five year-old native and citizen of Bolivia who entered the United States as a visitor for pleasure in 1995. The record further reflects that the applicant's husband is a forty-six year-old native and citizen of the United States. They married on April 14, 1997 and currently reside in Deerfield Beach, Florida.

Counsel asserts that the applicant's husband would suffer extreme hardship if the applicant were removed from the United States because he has never lived outside of the United States or the Commonwealth of Puerto Rico, where he was born. See *Brief in Support of Appeal* at 4. Counsel states that relocating to Bolivia would therefore cause the applicant's husband to suffer extreme hardship. Counsel additionally asserts that political and economic conditions in Bolivia would also cause the applicant's husband to suffer extreme hardship. Counsel refers to news articles documenting the strong ties between Bolivian president Evo Morales and Venezuelan president Hugo Chavez and states, "The concerns over Hugo Chavez' influence over the country of Bolivia as they relate to the United States of America and its citizens are many." *Brief* at 5. Counsel then discusses Chavez' efforts to establish a "Cuban-style dictatorship" in Venezuela and refers to the U.S. State Department's *Country Reports on Human Rights Practices* for 2006, which lists some general human rights problems in Bolivia, including police brutality, arbitrary arrest, and political and judicial corruption. *Id.* The AAO notes that the information on the human rights situation in Bolivia cited by counsel is very general and there is no indication that the applicant's husband would be in any specific danger if he were to relocate to Bolivia. Further, the detailed information on Hugo Chavez and events in Venezuela does not establish that the applicant's husband would be in any danger if he were to relocate to Bolivia.

Counsel additionally asserts that because of the political and economic conditions in Bolivia, which is "the poorest and least developed country in South America," the applicant's husband, who has no family ties there and is a citizen of the United States, would suffer extreme hardship if he were to relocate there. *Brief* at 6. Counsel states the applicant's husband owns his own roofing business and would suffer financially if he relocated to Bolivia and was forced to liquidate the business as well as all of his personal property. Counsel further states,

██████████'s standard of living would clearly be lost should he be forced to relocated (sic) to Bolivia with the Applicant as his present income could never be duplicated in Bolivia. . . To make matters worse, ██████████ does not have the command of the Spanish language in an employment setting . . . Another extreme hardship that would occur to ██████████'s financial condition should he be forced to relocate with the Applicant . . would lie in loss of assets. *Brief* at 6-7.

No evidence was submitted concerning the applicant's income from his business, his assets, or his ability to find employment in Bolivia. Further, no explanation was submitted concerning the assertion that the applicant, who was born in Puerto Rico, would not have a sufficient command of the Spanish language to find employment in Bolivia. Although counsel states that the applicant's husband "expects to gross approximately \$52,000.00" in 2006, no documentation of his income was submitted with the waiver application or appeal, and income tax returns for 2000 and 2001 submitted with an Affidavit of Support (Form I-864) list his business income as \$12,070 and \$13,947, respectively. 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, although it appears that relocating to Bolivia would have a negative impact on the financial situation and standard of living of the applicant's husband, 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.

Counsel asserts that the applicant's husband would also suffer physical hardship in Bolivia because he suffers from carpal tunnel syndrome, a herniated disc, hypertension, and muscular degeneration of the right eye. In support of these assertions, counsel submitted copies of medical records relating to the applicant's husband dating from 2004 to 2006. These documents appear to be notes taken by his physician, but they contain only hand-written notations that contain numerous abbreviations and acronyms and are otherwise virtually illegible. No other evidence was provided to explain the medical conditions the applicant's husband suffers from, such as a letter in plain language from his physician describing his diagnosis, any treatment and medication needed, his prognosis for recovery, and any assistance he would need from family members during and after treatment. Without more detailed information, the AAO is not in the position to review medical records and reach conclusions concerning the diagnosis or severity of a medical condition or the treatment and assistance needed.

Counsel states that the applicant's husband is experiencing pain due to carpal tunnel syndrome and a herniated disk, which is partially responsible for a rise in his blood pressure. He further states that the muscular degeneration in his eye could lead to a total loss of vision. Counsel states,

The greatest immediate health concern is his hypertension. [REDACTED] can not maintain his blood pressure at its present level as his heart will eventually fail. At the present level, the likelihood is that it will fail sooner rather than later. . . [REDACTED]'s blood pressure must be controlled. [REDACTED]'s other health problems must also be controlled . . . Clearly, given [REDACTED]'s health and Bolivia's health track record; having him live in Bolivia would case extreme hardship to him, if not death.

As noted above, the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena, supra; Matter of Laureano, supra; Matter of Ramirez-Sanchez, supra.* The record does not establish that the applicant's husband suffers from a serious medical condition that would cause him to experience extreme hardship if he were to relocate to Bolivia.

Counsel also states that the applicant's husband would suffer emotional hardship if he were to remain in the United States and be separated from his wife. In an affidavit submitted with the waiver application, the applicant's husband states, "it will be detrimental to my well-being to not be able to maintain a familial relationship with my wife. . . It would be devastating for me not to have my wife living with me in the United States of America." *Affidavit of [REDACTED]* dated March 13, 2004. There is no evidence on the record to establish that the emotional effects of separation from the applicant would be more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's removal or exclusion. Although the depth of his distress over the prospect of being separated from his wife 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 removal or exclusion. The prospect of separation or involuntary relocation nearly 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, physical, and financial hardship the applicant’s husband 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 Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *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).

A review of the documentation in the record reflects that the applicant has failed to show that the hardships faced by the qualifying relative, when considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. 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.