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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: LOS ANGELES Date: AUG 0 8 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 a crime 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 remain in the United States with his U.S. citizen wife and 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 January 19, 2005.

On appeal, counsel for the applicant contends that the applicant's U.S. citizen wife and children will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Brief in Support of Appeal*, received March 14, 2005. Counsel further asserts that the district director applied an erroneous standard of extreme hardship. *Id.*

The record contains a brief from counsel; a letter from the applicant's mother's doctor; a copy of the applicant's wife's naturalization certificate; a copy of the marriage certificate of the applicant and his wife; documentation relating to the applicant's criminal history; letters attesting to the applicant's character and business relationships; a statement from the applicant; a statement from the applicant's wife; a copy of the applicant's birth certificate; copies of tax records for the applicant and his wife; copies of pay stubs for the applicant; copies of birth certificates for the applicant's children; copies of documents relating to the applicant's leasing of two automobiles, and; copies of bank statements. 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.

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

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . 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

(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 . . .

The record reflects that the applicant was convicted of voluntary manslaughter under section 192(a) of the California Penal Code on June 11, 1987. The applicant was further convicted of the Use of Food Stamps in an Improper Manner under section 10980(G) of the California Penal Code in 1995. Thus, the applicant was found inadmissible under section 212(a)(2)(A)(i)(I) of the Act for committing a crime involving moral turpitude. The applicant does not contest his inadmissibility on appeal.

The record reflects that the applicant's conviction under section 10980(G) of the California Penal Code was effectively expunged, as his guilty plea and conviction were set aside on March 20, 1998 upon the completion of his probation and payment of restitution. The AAO has examined whether the applicant's relief (expungement) under California Penal Code section 1203.4 has a bearing on whether such conviction continues to be a basis for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. In the Ninth Circuit, in certain narrow circumstances, expungement of a criminal conviction may prevent the conviction from serving as a basis for inadmissibility under U.S. immigration laws. *Lujan-Armendariz v. INS*, 222 F.3d 728 (9th Cir. 2000). However, a state expungement in the Ninth Circuit may only extend to federal immigration law application where the applicant was provided an exungement of a drug conviction pursuant to a law that serves as the state equivalent of the Federal First Offenders Act (FFOA.) *Id.* In the present matter, the applicant has not been convicted of possession of a controlled substance. Further, as the applicant had a conviction for manslaughter prior to his conviction for the use of food stamps in an improper manner, the record strongly suggests that section 1203.4 of the California Penal Code is not a form of relief limited to first offenders. Thus, the record does not show that the applicant was afforded relief under a California provision that is equivalent to the FFOA. Accordingly, the applicant has not asserted or shown that his expungement of his conviction for the use of food stamps in an improper manner impacts his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

Based on the foregoing, the applicant requires a waiver under section 212(h)(1)(B) 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 U.S. citizen wife and daughters. *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 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 provided that he and his wife own a business and home, and that they would "lose everything" if he is deported. *Applicant's Statement Submitted with Form I-601 Application,* dated May 22, 2002. The applicant stated that his wife and children would suffer extremely if he is compelled to depart the United States. *Id.*

The applicant's wife indicated that she has resided in the United States since 1980. *Statement from Applicant's Wife in Support of Form I-601 Application,* dated May 6, 2002. She provided that she shares a close relationship with the applicant, and that they own a home together. *Id.* She stated that the applicant contributes substantially to their household, including cooking, cleaning, and childcare. *Id.* The applicant's wife expressed that she would have to sell their business and home if the applicant departs, and she would be compelled to spend less time with their kids. *Id.* She stated that, although she is a native of Mexico, she has no contacts there. *Id.* She indicated that she would have to support the applicant in Mexico, implying that he would have no employment opportunities there. *Id.* The applicant's wife further stated that her children would suffer emotional and psychological hardship if the applicant departs, due to the loss of the applicant's companionship and the fact that she would spend less time with them. *Id.*

The record contains a letter from the applicant's mother's doctor in which he stated that she suffers from "Hypertension, GERD, Chronic Abdominal Pain, TMJ Pain and Chronic Pelvic Pain due to pelvic relaxation," as well as impaired visual acuity. *Letter from* [redacted] *M.D.*, dated February 9, 2005. [redacted] stated that the applicant's mother lives with the applicant, and that she requires the applicant's care and assistance "24 hours a day, 7 days a week." *Id.*

On appeal, counsel contends that the applicant's U.S. citizen wife and children will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Brief in Support of Appeal*, received March 14, 2005. Counsel makes extensive reference to a report from "[redacted] the family psychologist," when discussing psychological consequences for the applicant's wife, children, and mother. *Id.* at 5-10. Counsel states that the applicant's wife and children have suffered extreme distress and anxiety at the prospect of the applicant departing the United States, and that they have had to see a family psychologist. *Id.* at 2. Counsel indicated that the applicant's wife and one of his daughters suffers from anxiety disorder, and that they are incapable of withstanding a drastic change in their environment. *Id.* Counsel asserts that the applicant's children would not be able to easily adjust to relocating to Mexico, as they do not read or write Spanish, and they would miss the regular visits they enjoy with their relatives in the United States. *Id.* at 8.

Counsel contends that the district director failed to give adequate consideration to the effect that the applicant's departure would have on the applicant's mother. *Id.* at 10. Counsel indicates that the applicant's mother has poor health and she is unemployed. *Id.* Counsel indicated that the district director failed to consider or analyze the economic consequences for the applicant's mother, as she is unable to work due to her illness. *Id.*

Counsel asserts that the district director failed to consider all elements of hardship to the applicant's relatives in aggregate. *Id.* at 11.

Upon review, the applicant has failed to show that his wife, children, or mother will suffer extreme hardship should he be prohibited from remaining in the United States. The record reflects that the applicant, his wife, and his children share a close relationship. Counsel makes frequent reference to a psychologist's report to show that the applicant's wife and children are experiencing significant emotional consequences due to the possibility of the applicant departing the United States. Counsel asserts that the applicant's wife and daughter have been diagnosed with anxiety disorder, and that the family has been compelled to visit a family psychologist. However, the applicant has not provided a copy of the psychologist's report that ostensibly forms the basis for much of counsel's assertions. Nor has the applicant submitted any other evidence to support that his family members have undergone analysis or treatment for mental health conditions. It is noted that, while the applicant and his wife have provided statements for the record, neither have mentioned seeking or receiving treatment by a mental health professional. As counsel makes specific references to a psychological report in his appellate brief, it is assumed that such report was available for submission on appeal. 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). Thus, counsel's assertions regarding the mental health of the applicant's family members are not supported by documentary evidence, and they are given little weight in this proceeding.

The applicant's wife has expressed that she and the applicant's children will suffer emotional consequences if they are separated from the applicant. However, the record does not support that they will experience consequences that go beyond those ordinarily expected of the family members of those deemed inadmissible. 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.

The applicant and his wife indicated that the applicant's family members will suffer economic hardship if the applicant departs the United States. They explained that they own and operate a business together, and they own a home. However, the record contains no clear explanation of the applicant's and his wife's business, such as what are their current expenses and income, what products or services they offer, or what are their staffing needs. Thus, the AAO cannot properly assess whether the applicant's wife can operate the business in the applicant's absence. The record further contains no evidence to reflect that the applicant and his wife own a home. It is noted that in the Forms I-864, Affidavit of Support, submitted by the applicant's wife on his behalf, the applicant's wife did not indicate that she or the applicant own real estate. Further, the applicant has not provided an account of his household's monthly expenses such that the AAO can assess the income requirements for the applicant's wife and children. While the applicant's wife indicated that she would be compelled to support the applicant in Mexico, the applicant has not provided documentation to establish that he would be unable to obtain employment there. 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. The applicant has not submitted adequate documentation to show that his wife or children will suffer economic hardship in his absence.

Counsel asserts that the applicant's mother will suffer hardship if the applicant departs the United States. However, the record contains little documentation to establish the nature and severity of hardship to the applicant's mother. For example, the applicant has not explained whether his mother has independent economic resources, or the amount of financial support he provides for her. The applicant has not indicated whether his mother has other children or relatives who reside in the United States on whom she could call for assistance. The applicant provided a letter from his mother's doctor which states that his mother relies on his support "24 hours a day, 7 days a week." *Letter from* [redacted] dated February 9, 2005. Yet, the applicant's wife stated that she cannot operate their business in the applicant's absence. Thus, the applicant has not explained how he may operate a business and provide 24-hour care for his mother simultaneously. While the applicant's mother's doctor stated that the applicant's mother resides with the applicant, the applicant has provided no independent documentation to support this assertion. In fact, the

applicant did not reference his mother at all in his statement. 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. The AAO lacks sufficient evidence or information in order to assess the hardship to the applicant's mother should the applicant depart the United States. Accordingly, the applicant has not shown that she would experience extreme hardship.

The applicant's wife expressed that she has no contacts in Mexico, and that she does not wish to return there. She implied that the applicant's children would have emotional difficulty adjusting to life in Mexico, and counsel stated that they do not speak or write Spanish. Thus, the record strongly suggests that the applicant's wife and children will remain in the United States if the applicant departs. Accordingly, family separation appears likely. However, as discussed above, the applicant has not shown that his wife and children will experience consequences due to separation from him that go beyond those commonly expected. The applicant's wife and children are not required to reside outside of the United States as a result of the applicant's inadmissibility. While the AAO acknowledges that the applicant's wife and children will bear significant consequences as a result of family separation, the applicant has not shown that such consequences amount to extreme hardship as contemplated by section 212(h)(1)(B) of the Act.

All instances of hardship to the applicant's family members have been considered in aggregate. Based on the foregoing, the applicant has not submitted sufficient documentation to show that, should he be prohibited from remaining in the United States, his family members will suffer hardship that is unusual or beyond that which would normally be expected upon deportation. Thus, the record fails to establish the existence of extreme hardship to the applicant's wife, children, or mother 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 he 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.