U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

H2

FILE: [redacted] Office: LOS ANGELES, CALIFORNIA Date: APR 26 2006

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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, Director
Administrative Appeals Office

DISCUSSION: The Application for a Waiver of Inadmissibility 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 record reflects that on June 24, 2004, the district director found that the applicant was inadmissible to the U.S. pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen. He applied for a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his wife. The district director concluded that the applicant had failed to establish that his wife would experience extreme hardship on account of his inadmissibility.

On appeal, counsel asserts that CIS failed to consider all the hardship factors in the aggregate, leading to an erroneous conclusion that the applicant's wife would not suffer extreme hardship on account of the applicant's inadmissibility. Counsel contends that the applicant did not willfully misrepresent any facts during his attempt to enter the United States using his cousin's U.S. birth certificate, since he was intoxicated during the incident. Finally, counsel states that the applicant retracted his misrepresentation at his first opportunity; therefore, the misrepresentation should be removed from consideration. Counsel does not submit any additional evidence on appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant made a willful misrepresentation of a material fact on October 30, 1993 by claiming that he was a U.S. citizen during his attempt to cross the border from Mexico into the United States at San Ysidro. The record does not indicate that he withdrew his false statement and/or misrepresentation at the time he attempted to enter the United States. His admission of his misrepresentation during his adjustment of status interview does not constitute a timely retraction. There is also no evidence on the record that the applicant was intoxicated or otherwise not in control of his own actions at the time he presented himself for admission. The applicant is inadmissible under § 212(a)(6)(C) of the Act.

A § 212(i) waiver of this bar to admission depends first upon a showing that the bar imposes an extreme hardship to the citizen or lawful permanent resident (LPR) spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to § 212(i) waiver proceedings. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to § 212(i) of the Act. These factors include 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.

Counsel contends that the applicant's spouse would suffer extreme emotional hardship as a result of departing from the United States, as her immediate family resides in this country. Counsel states that the applicant's wife would not be able to leave her mother by herself, as her mother is unable to conduct her daily activities without assistance from the applicant's spouse. Counsel states that if the applicant's spouse moved to Mexico, she would be forced to take her mother with her, and her mother would be unable to obtain her necessary medicine in Mexico. Counsel contends that seeing her mother so deprived would cause the applicant's wife to suffer extreme emotional hardship. Counsel points out that the applicant's wife is originally from Honduras and has never lived in Mexico; hence, she would find it extremely difficult to adjust to life in Mexico. Counsel also asserts that the applicant's spouse would be unable to secure employment in Mexico, especially since she would not have work authorization there. Counsel states that the latter factor, coupled with the applicant's own unemployment in Mexico, will cause the applicant's wife to suffer extreme economic hardship.

The evidence does not establish that either the applicant's spouse, who works as a caregiver, or the applicant himself would be unable to obtain work in Mexico. In any case, a lower standard of living is a common result of a relocation abroad on account of one spouse's inadmissibility, and it does not necessarily constitute an extreme circumstance. In addition, there is no evidence that the applicant's wife would suffer greater emotional hardship upon separation from her family members than other similarly situated individuals. The record contains two letters from doctors relating to the applicant's mother in law's condition. [redacted], in his letter dated May 26, 2004, indicated that the applicant's mother in law received treatment for spinal problems, and that she requires a walker and the applicant's wife's assistance. On May 25, 2004, [redacted] wrote that the applicant's mother in law was responding favorably to treatment for rheumatoid arthritis. There is no evidence that the applicant's wife is the only source of assistance to her mother or that suitable medical treatment is unavailable in Mexico. It cannot be concluded that the applicant's wife's separation from her mother or her decision to take her mother to Mexico would cause the applicant's wife to suffer extreme hardship.

The evidence also fails to establish extreme hardship to the applicant's spouse if she remains in the United States maintaining her employment and close proximity to other family members. In her statement submitted with the I-601 application, the applicant's wife stated that the applicant contributes to the financial wellbeing of their household, and he supports her emotionally. She also wrote that the applicant helps her care for her ill mother. The applicant's wife stated that she would lose an important part of her life if the applicant is not allowed to remain in the United States. The AAO notes that 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. Furthermore, although the AAO recognizes that the applicant's wife would endure hardship as a result of separation from the applicant, her situation is typical to individuals separated as a result of removal. The record does not lead to the conclusion that the applicant's wife circumstances would rise to the level of extreme hardship.

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, *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.

Beyond the decision of the district director, the AAO notes that on September 28, 2000 the applicant was convicted of petty theft pursuant to California Penal Code (CPC) § 484(A)/488. Theft constitutes a crime involving moral turpitude. Section 212(a)(2)(A) of the Act states in pertinent part, that:

> (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.

It appears, however, that the applicant's crime falls under the exception to the above bar provided for in § 212(a)(2)(a)(ii) of the Act, which states in pertinent part, that:

> (ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-
>
> . . . .
>
> > (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

In the present case, the applicant was convicted of petty theft of personal property, a misdemeanor. Pursuant to CPC § 490, petty theft is punishable by a fine not exceeding one thousand dollars, by imprisonment in the county jail not exceeding six months, or both. The record indicates that the applicant was sentenced to three years of probation. The evidence in the record thus establishes that the applicant's September 28, 2000 conviction falls within the petty offense exception set forth in the Act.

Nevertheless, the applicant is found to be inadmissible under § 212(a)(6)(C)(i) of the Act. A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 § 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 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.