U.S. Department of Homeland Security
20 Mass. Avenue, N.W., Rm. 3000
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: NEWARK Date: OCT 06 2006

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act (the 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 district director, Newark, New Jersey denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [redacted] is a native and citizen of India 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), as an individual who has been convicted of a crime involving moral turpitude. He was also found inadmissible under section 212(a)(9)(B)(i)(II), 8 U.S.C. 1182(a)(9)(B)(i)(II), for having accrued more than one year of unlawful presence. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h) in order to reside in the United States with his U.S. citizen wife, [redacted]

As a result of having triggered the bar at 212(a)(9)(B) by traveling on advance parole and reentering the United States and because of his two criminal convictions, the district director found the applicant to be inadmissible to the United States. *District Director's Decision,* dated January 6, 2005. The district director also found 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 Inadmissibility (Form I-601). *Id.*

On appeal, counsel submits a psychological report from a licensed clinical social worker that had not been submitted previously. Counsel asserts that the psychological hardship will suffer if her husband's waiver application is denied is far from common. *Form I-290B*, filed on February 8, 2005.

In addition to the above mentioned psychological report, the record includes a hardship statement from Ms. [redacted] in which she describes how her life would be destroyed if her husband were denied permission to reside in the United States with her; and the couple's tax records. The AAO reviewed the record in its entirety before issuing its decision.

The record reflects that the applicant was convicted twice for fraudulent use of a credit card in 2002 and again in 2003. As a result of these convictions and the fact that he was unlawfully present in the United States for more than one year, departed, and reentered, the applicant was found to be inadmissible to the United States. Counsel does not appear to contest this finding.

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) of the Act provides, in pertinent part, that:

> 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 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 . . .

A section 212(h) waiver is dependent first, upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse, parent, or child of the applicant. 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 Cervantes-Gonzalez,* the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

Hardship the applicant himself experiences upon denial of his application for admission is not considered in section 212(h) waiver proceedings.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she accompanies her husband to live in India or and, in the alternative, in the event that she remains in the United States separated from her husband.

The record is insufficient for Mr. [redacted] to establish extreme hardship to Ms. [redacted] she remains in the United States without him or if she joins him in India.

Counsel asserts that Ms. [redacted] will suffer extreme psychological hardship if her husband's waiver application is denied. Although Ms. [redacted] may suffer emotionally if Mr. [redacted] returned to India and she remained here, they face the same decision that confronts others in their situation – the decision whether to remain in the United States or relocate to avoid separation – and this does not amount to extreme hardship under the law as it exists today. The AAO cannot give a large amount of weight to the psychological report prepared by [redacted], a licensed clinical social worker. The report notes Mr. [redacted] and Ms. [redacted] were referred to the social worker for immigration purposes. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on a single interview with Ms. [redacted] and Mr. [redacted]. Mr. [redacted] report was prepared on February 20, 2005, yet the record fails to reflect an ongoing relationship between Ms. [redacted] and Mr. [redacted] or any other mental health professional.

Despite noting that Ms. [redacted] has contemplated suicide, the report does not mention the need for further therapy or medication. For these reasons, little weight can be given to the report prepared by Mr. [redacted]

Counsel asserts that Ms. [redacted] suffers from a documented heart ailment but does not submit documentation to show that she will be unable to access medical treatment for this condition in India. 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).

In her brief hardship statement, Ms. [redacted] attests that she cannot be separated from her husband but does not address why she could not live together with him in India if his waiver application is denied. Ms. [redacted] is originally from India and the record is silent regarding country conditions in India.

Other than a statement from the applicant in which she notes her love for and emotional attachment to Mr. [redacted], (*See Ms* [redacted] *Hardship Statement),* and a psychological report to which little weight can be given, no objective evidence was submitted to supplement Ms. [redacted] claim of extreme hardship. Based on the existing record, the effect of separation on Ms. [redacted] while difficult, would not rise above what individuals separated as a result of inadmissibility typically experience and does meet the legal standard established by Congress and subsequent case law interpreting the meaning of extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband faces extreme hardship if the applicant is refused admission. 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 hardship experienced by the families of most individuals who are deported.

In this case, though the applicant's qualifying relative will endure emotional hardship if she remains in the United States separated from the applicant, their situation, based on the limited documentation in the record, does not rise to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(h) of the Act, 8 U.S.C. § 1186(h). Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

As the applicant has been found ineligible for a waiver under section 212(h) of the Act, no purpose would be served in analyzing his eligibility under section 212(a)(9)(B)(v) of the Act, as it has the same requirement of extreme hardship to a qualifying relative.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests 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.