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U.S. Citizenship and Immigration Services

[redacted]

H2

FILE: [redacted] Office: PHOENIX, ARIZONA Date: JAN 07 2009

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:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
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 Portugal who has resided in the United States since October 1, 2001, when she was admitted under the visa waiver program. She was found to be inadmissible 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 crimes involving moral turpitude (shoplifting, theft, and possession of stolen property). 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 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 December 30, 2005.

On appeal, the applicant states that she did not send enough information with her waiver application. She submitted documentation in support of the appeal, including declarations from the applicant and her husband, a drawing and letter from the applicant's daughter, letters from the applicant's daughter's fourth-grade teacher and from her Tae Kwon Do instructor, school records for the applicant's daughter, and letters from friends in support of the waiver application. 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]his 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 shoplifting in Tempe, Arizona on June 8, 2004 and ordered to pay a fine. She was also convicted of theft in Toronto, Canada on January 26, 1983 and on August 30, 1983 and in Hamilton, Ontario on April 25, 2001. The applicant is therefore inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Since less than fifteen years has passed since the conduct for which the applicant was last convicted, she is not eligible for a waiver under section 212(h)(1)(A) of the Act, but may seek a waiver under section 212(h)(1)(B) of the Act.

The AAO notes that the record contains several references to the hardship that the applicant's child would suffer if the applicant were removed to Portugal. Section 212(h) of the Act provides that a waiver of section 212(a)(2)(A)(i)(I) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse, parent, or child. It is noted that the applicant's daughter has submitted an application to Register Permanent Resident or Adjust Status (Form I-485), but there is no evidence on the record that this application has been approved. Since the applicant's daughter is not a citizen or permanent resident of the United States, the applicant's spouse is the only qualifying relative, and hardship to the applicant's daughter will not be separately considered, except as it may affect the applicant's spouse.

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 forty-four year-old native and citizen of Portugal who has resided in the United States since 2001, when she entered the country under the visa waiver program. The applicant's husband is a forty-three year-old native of Canada and citizen of the United States whom the applicant married on December 20, 2000. The applicant and her husband currently reside in Mesa, Arizona with the applicant's thirteen year-old daughter.

The applicant asserts that her husband would suffer extreme hardship if she is removed from the United States because he has lived in the United States since he was a child and would have to leave his entire family. She further states that he plans to take over from the owner the business he currently supervises. *See undated letter from* The applicant's husband states that if he relocated to Portugal with the applicant, he would have limited employment opportunities because he does not speak the language. He further states that he would be unable to support his wife and daughter the way he does in the United States, and that he has found information indicating that housing, fuel, and food costs are high in Portugal and unemployment is also high. He states that for someone like him who does not speak the language, "employment opportunities would be all but nonexistent." *See undated letter from* [redacted]

The AAO notes that no documentation was submitted concerning conditions in Portugal to support an assertion that the applicant's husband would suffer economic hardship if he relocated to Portugal. Further, there is no indication that there are any unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of the applicant's removal. The effects of the applicant's removal on her husband's financial situation therefore appear to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's husband. *See INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

There is no evidence that the applicant's husband would suffer emotional hardship if he relocated to Portugal and were separated from his family in the United States, such as evidence concerning his mental health or the potential emotional or psychological effects of the separation. 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)). The evidence on the record does not establish that the emotional effects of separation from family members in the United States would be more serious than the type of hardship a family member would normally suffer when faced with the prospect of relocation.

The emotional and financial hardship the applicant's husband would experience if he relocated to Portugal appears to be the type of hardship that a family member 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). No information or evidence was submitted to support a claim that the applicant's husband would suffer extreme hardship if he were separated from the applicant. Therefore, the AAO cannot make a determination of whether the applicant's husband would suffer extreme hardship if he remained in the United states without the applicant.

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 her 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.