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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEW YORK, NY Date: JUL 14 2009

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act (INA), 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.

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, as required by 8 C.F.R. 103.5(a)(1)(i).

Michael Grissom

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Trinidad, 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 record indicates that the applicant has a U.S. citizen spouse, two U.S. citizen children, and a lawful permanent resident father. The applicant seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with his family in the United States.

The district director based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's conviction for possession of a forged instrument in the second degree, a class "D" felony. She then found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative as a result of his inadmissibility and that no compelling reasons warranted the granting of the waiver as a matter of discretion. She denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *District Director's Decision,* dated February 14, 2007.

Counsel, in his brief on appeal, asserts that because there was no court hearing or further interview after the applicant submitted his waiver application, there was no opportunity for the applicant to submit evidence of hardship and its effect on the qualifying relatives in the applicant's case. Counsel also asserts that the affidavit submitted by the applicant's spouse satisfies the requirements in establishing extreme hardship.

The record indicates that on November 1, 2000 the applicant was arrested for criminal possession of a forged instrument in the second degree in violation of New York Penal Law § 170.25; on April 27, 2001 he was convicted and sentenced to three years probation.

New York Penal Law § 170.25 states that:

> A person is guilty of criminal possession of a forged instrument in the second degree when, with knowledge that it is forged and with intent to defraud, deceive, or injure another, he utters or possesses any forged instrument of a kind specified in section 170.10.
>
> Criminal possession of a forged instrument in the second degree is a class D felony.

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992):

> [M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to

> the rules of morality and the duties owed between man and man, either one's fellow man or society in general.
>
> In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required *mens rea* may not be determined from the statute, moral turpitude does not inhere.

Conviction of criminal possession of forgery devices with intent to use them for the purpose of forgery is a conviction of a crime involving moral turpitude. *Matter of Jimenez*, 14 I. & N. Dec. 442, 1973 (BIA). Criminal possession has been held to be a crime involving moral turpitude when accompanied by intent to commit a crime involving moral turpitude, *U.S. ex rel. Guarino v. Uhl*, 107 F.2d 339 (C.A. 2, 1939). Forgery has been held to be a crime involving moral turpitude. *Matter of A-*, 5 I. & N. Dec. 52 (BIA 1953); *Morasch v. INS*, 363 F.2d 30 (C.A. 9, 1966); *U.S. ex rel. Robinson v. Day*, 51 F.2d 1022 (C.A. 2, 1931). Thus, the AAO finds that the applicant's conviction for criminal possession of a forged instrument in the second degree in violation of New York Penal Law § 170.25 constitutes a crime involving moral turpitude.

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 –
>
> > 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) (A) . . . it is established to the satisfaction of the Attorney General 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 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 indicates that the applicant was convicted of an offense that was committed in 2001. His current application for adjustment of status is less than 15 years after those activities; he is therefore statutorily ineligible for a waiver pursuant to section 212(h)(1)(A) of the Act. He is, however, eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(1)(B) of the Act.

A section 212(h)(1)(B) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on a "qualifying relative," *i.e.,* the U.S. citizen or lawfully resident spouse, parent or child of the applicant. Hardship to the applicant is not considered in section 212(h) waiver proceedings and will be considered only insofar as it is established that hardship to the applicant is causing hardship to a qualifying relative in the application. If extreme hardship to a qualifying relative is established, in this case the applicant's spouse, children, or father, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act; s*ee also Matter of Mendez-Moralez,* 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 to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, 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.

> 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).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant and resides in Trinidad and in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

In his brief, counsel states that the applicant's children will suffer extreme hardship as a result of the applicant's removal from the United States because his removal would be tantamount to the applicant's death, causing irreversible separation from his children. Counsel also states that the applicant's family will suffer financially as the applicant is the main income earner of the family.

The AAO notes that the record includes a statement from counsel dated June 28, 2006. In his statement counsel asserts that the applicant and his spouse have been residing together since 1991 and were married in 1997. He states that the applicant has been present every day of his children's lives and to remove him from their home would be emotionally and socially devastating to the children. Counsel also states that without the applicant's help the applicant's spouse would not be able to manage physically or financially.

The record also includes two statements from the applicant's spouse, one dated March 2007 and one dated May 2007. The AAO notes that these statements, although not identical copies, assert the same hardship concerns. The applicant's spouse states that she and her children have lived in the United States all of their lives. She states that relocating to Trinidad would be an extreme hardship because the applicant does not have a support group there, they would have no home to stay in, and the applicant would not be able to find employment. She states that the applicant's mother, who lives in Trinidad, is suffering from breast cancer and relies on the applicant's support from the United States for her medications. She also states that both of her children suffer from a skin condition, which causes them to break out in sores and becomes significantly worse in warm weather. She states that it would cause her children constant, extreme, pain to relocate to a warm climate like in Trinidad.

The applicant's spouse also states that she and her children will suffer if the applicant is removed from the United States and they do not relocate to Trinidad. The applicant's spouse states that she is employed as a part-time teacher and earned $5,000 in 2006. She states that she and the children rely on the applicant's income to pay their bills, especially their rent. She also states that they would not be able to afford childcare if the applicant were removed, so she would be forced to stop working and she fears her family would become homeless. The applicant's spouse also states concern for the emotional impact the applicant's removal would have on her and the children. She states that the children have never lived a day without seeing their father and if he were removed the whole structure of their lives would collapse.

The AAO finds that the current record lacks documentation to support a finding of extreme hardship in the applicant's case. Counsel did not submit any documentation to support his assertions and/or the applicant's spouse's assertions in regards to the extreme hardship that will be suffered as a result of the applicant's inadmissibility.

The AAO notes that 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). 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)). Thus, the AAO finds that the applicant has failed to show that his spouse, children, and/or father would suffer extreme hardship as a result of his inadmissibility.

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. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse, children, and/or father 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(a)(9)(B) 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.