U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

H2

[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: JUN 30 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 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 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, Los Angeles (Santa Ana), California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider/reopen. The motion will be granted and the previous decisions of the district director and the AAO will be affirmed.

The record reflects that 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 crimes involving moral turpitude (assault on a police officer and battery). The record indicates that the applicant has a U.S. citizen spouse and two U.S. citizen stepchildren. The applicant seeks a waiver of inadmissibility in order to reside with his family in the United States.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *District Director's Decision*, at 3, dated October 7, 2004. The AAO also determined that the applicant had failed to establish extreme hardship to a qualifying relative and dismissed the appeal. *AAO Chief's Decision*, at 7, dated August 4, 2006.

On motion, counsel asserts that the applicant's children rely on the applicant for support, additional evidence is provided to establish support, and the applicant's spouse and children would face extreme hardship. *Motion to Reconsider/Reopen*, at 2, dated September 23, 2006.

The record includes, but is not limited to, a statement from the applicant and previously submitted documents.

Although counsel states that the applicant is submitting a motion to reconsider, the applicant does not contend that the AAO's decision was based on an incorrect application of law or policy based on the record at the time of the decision. Therefore, the applicant's filing does not meet the requirements of a motion to reconsider. However, as the applicant submits additional evidence for the record, the AAO will consider his submission as a motion to reopen.

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.

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

(h) 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 [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 AAO notes that section 212(h) 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. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

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 family ties to 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.

The AAO hereby incorporates by reference the discussion of the evidence, analysis, and conclusions in its prior decision.

On motion, counsel states that the record demonstrates extreme hardship to the applicant's spouse and children, additional corroborating evidence of support is being submitted, the previously submitted social worker's letter chronicles Mexico country conditions to which the applicant's family would have to relocate, and the record and additional evidence establish severe psychological, societal and political hardships. *Motion to Reconsider/Reopen*, at 1-2.

The applicant states that he provides economic, social, spiritual and emotional support for his spouse and stepchildren; he is taking steps to adopt his stepchildren and he is the only father in their lives; he provides the majority of their financial support in addition to their grandmother's expenses; his support includes paying for groceries, the grandmother's rent of $400 per month, and the utilities of $300 per month; he does not claim the children on his tax returns as he believes that they are claimed by their birth father; and he treats the children as his own, provides emotional support and guidance, and takes them to doctor's appointments and family events. *Applicant's Statement*, at 1, dated

September 12, 2006. While the AAO acknowledges the claims made by counsel and the applicant, the record fails to document the applicant's support of his stepchildren or that he is in the process of adopting them. Further, the record does not include sufficient documentary evidence of the emotional, financial or any other type of hardship that the applicant's qualifying relatives would encounter in Mexico or upon remaining in the United States without the applicant. The AAO notes that without documentary evidence to support his claims, the assertions of counsel will not satisfy the applicant'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). Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See 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 psychological evaluation of the applicant's family is based on a single interview conducted by telephone and is, therefore, of limited evidentiary value to a finding of extreme hardship. Accordingly, the record does not reflect that the applicant's qualifying relatives would encounter extreme hardship in Mexico or upon remaining in the United States without the applicant.

Having considered the additional evidence provided in the applicant's motion to reopen in combination with the original evidence in the record, the AAO finds it insufficient to establish the applicant's eligibility for a section 212(h) waiver.

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 previous decisions of the district director and the AAO are affirmed.

ORDER: The previous decisions of the district director and the AAO are affirmed.