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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

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: PHOENIX, ARIZONA Date: OCT 09 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

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).

Perry Rhew
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 Germany who was found to be inadmissible to the United States 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 (theft). The applicant is married to a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. He 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 his wife.

The district director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Decision of the District Director* dated April 6, 2007.

On appeal, the applicant asserts that his removal would result in extreme hardship to his wife. The applicant's wife states that she would suffer emotional hardship if she were separated from the applicant and also if she were to relocate to Germany and be separated from her family members in the United States. She further states that she would be ostracized and ridiculed in the small town where the applicant's family resides in Eastern Germany. *See Declaration of* [redacted] dated April 29, 2007. She additionally states that she would experience financial hardship in Germany because she would be unable to find employment and would suffer hardship if she remained in the United States without the applicant because she would be unable to run their business without him and would be left financially devastated. *Declaration of* [redacted] In support of the appeal, the applicant submitted a declaration from his wife, letters in support of the applicant, a letter from his wife's doctor, and documentation related to their business. 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.
>
> (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).

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 ten counts of theft on September 18, 1996 in Zwickau, Germany and again convicted of theft on January 11, 2001 in Schweinfurt, Germany for conduct that took place on June 30, 1999. The applicant was convicted for conduct that took place less than fifteen years ago and therefore does not qualify 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.

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. Moreover, the U.S. Supreme Court additionally 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 thirty-nine year-old native and citizen of Germany who has resided in the United States since May 17, 2001, when he was admitted under the visa waiver program. The applicant's wife is a forty-five year-old native and citizen of the United States. They were married on April 19, 2002 and reside in Phoenix, Arizona.

The applicant's wife asserts that she would suffer emotional hardship if she relocated to Germany because she would be separated from her family members in the United States, including her siblings, children, and grandchildren. She states that she is in constant contact with her immediate relatives and they make up part of her "support system." *Declaration of* [redacted] dated April 29, 2007. She further states that she would not be able to see her grandchildren if she relocated to Germany because travel back and forth would be too expensive, and states that choosing between her husband and family "would be no choice at all, simply unbearable." *Declaration of* [redacted] She additionally states that she would feel "ostracized and ridiculed" in her husband's home town because of her patriotism and her diverse family, and states that the applicant's parents do not accept her or their marriage. *Declaration of* [redacted] No documentation was submitted concerning the applicant's wife's family member in the United States and no evidence was submitted indicating where they reside or how much time they spend with the applicant's wife. 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 applicant's wife further states that she would suffer financial hardship in Germany because the applicant is from East Germany where the unemployment rate is 19.5%. *Declaration of* [redacted] She further states that she would be unable to find employment because she does not speak German and though the applicant would eventually find a job as a mechanic, he would have to stay with family to help start over in Germany. *Id.* No evidence was submitted to support the assertions of the applicant's wife concerning unemployment in Eastern Germany, and the AO further notes that although the applicant was born and raised in former East Germany, he is a citizen of Germany and would be free to relocate to another part of the country. The mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship, and the record is insufficient to establish that the applicant's wife would suffer economic hardship in Germany beyond the common results of removal. *See INS v. Jong Ha Wang,* 450 U.S. 139 (1981).

The applicant's wife states that she was drinking heavily in the past and experienced depression and anxiety, and the applicant helps keep her sober and helps keep her anxiety "in check." *Declaration*

of [redacted] She states, "[T]he threat of losing his emotional support terrifies me and leaves me bereft." *Id.* In support of these assertions the applicant submitted a letter from his wife's physician stating that she has been treated for depression and anxiety in the past, and fears that the applicant will be deported have caused a recurrence of these conditions. *See letter from* [redacted] dated May 2, 2007. The letter states that she has been referred to a psychiatrist due to her condition, but no further information was submitted concerning her past treatment, her current condition, or any follow-up treatment. The record is insufficient to establish that any emotional difficulties she is experiencing are more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's deportation or exclusion. Although the depth of her distress over the applicant's immigration situation is not in question, a waiver of inadmissibility is available only where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

The applicant's wife also states that she would suffer financial hardship if the applicant were removed from the United States because as a skilled mechanic he is the backbone of their company and she would be unable to run their business without him. *Declaration of* [redacted] Aside from a copy of a trade name certification and letters from individuals with whom they do business, no documentation was submitted concerning their business operations or the income it generates, and no evidence was submitted to support the assertion of the applicant's wife that she would be unable to pay off debts they have incurred on her own. As noted above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra.* There is no indication on the record that the applicant's wife would be unable to support herself financially. Further, even if the loss of the applicant's income would have a negative impact on her financial situation, 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.

It appears from the record that any emotional or financial hardship to the applicant's wife would be the type of hardship that family members would normally suffer as a result of removal 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).

A review of the documentation in the record reflects that the applicant has failed to show that the hardships faced by the qualifying relative, when considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

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.