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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

H2

PUBLIC COPY

[REDACTED]

FILE: [REDACTED]

Office: PHILADELPHIA

Date: **AUG 20 2007**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(i) and 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) and 8 U.S.C. § 1182(h) respectively.

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

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 committed crimes involving moral turpitude; and section 212(a)(6)(C) of the Act for fraud or misrepresentation for failing to disclose his criminal record in seeking to adjust status to lawful permanent resident. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his spouse, [REDACTED] a naturalized U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(h) of the Act, 8 U.S.C. § 1182(i) and 8 U.S.C. § 1182(h) respectively, in order to reside in the United States with his wife.

The applicant and his spouse were married in the United States on March 30, 1995. The applicant's spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf that was approved on April 23, 1996. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on March 12, 1998. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) on July 8, 2005.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of Interim District Director [REDACTED]*, dated June 9, 2003.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to demonstrate extreme hardship to his spouse if the waiver of inadmissibility is not granted.

Section 212(a)(2)(A) of the Act states in pertinent part:

(i) In general.— . . . [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 . . . 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).

Court documents in the record reflect that the applicant pled guilty in the Delaware Court of Common Pleas on November 16, 1995 of 3rd Degree Forgery in violation of section 861(b)(3) of Chapter 11 of the Delaware Code and Criminal Impersonation in violation of section 906 of Chapter 11 of the Delaware Code and was sentenced to six months probation for each offense, both class A misdemeanors. (Case 99-12-0032). Under Delaware law, class A misdemeanors may be punished by up to one year of incarceration. 11 Del.C. § 4206.

The District Director noted in the decision that both of these crimes require a showing of intent to defraud and found that both crimes were thus crimes involving moral turpitude. The AAO concurs. Crimes of forgery or false statement have been found not to involve moral turpitude in some cases, but only where fraudulent intent is not a necessary element of the statute violated. See *Hernandez-Perez v. Gonzalez*, 2007 WL 2099121 (9th Cir. July 23, 2007); see also *Matter of Balao*, 20 I. & N. Dec. 440, 443 (BIA 1992); *Matter of Espinosa*, 10 I. & N. Dec. 98, 99-100 (BIA 1962). The AAO observes that the intent to defraud is an element of the statutes violated by the applicant. See Del.C. § 861(b)(3) (“a person is guilty of forgery when, *intending to defraud or injure another person . . . the person:* (3) Possesses a written instrument, knowing that it was made, completed or altered under circumstances constituting forgery); Del.C. § 907 (“a person is guilty of criminal impersonation when the person: (1) impersonates another person and does an act in an assumed character *intending to obtain a benefit or to injure or defraud another person . . .*”) (emphasis added). Counsel has not disputed that the applicant’s convictions for forgery and criminal impersonation were crimes involving moral turpitude, or that the applicant’s failure to disclose such convictions in his adjustment application constituted a misrepresentation of a material fact that renders that applicant inadmissible under section 212(a)(6)(C) of the Act.

The record also reflects that the applicant pled guilty in the Delaware Court of Common Pleas on December 16, 1999 to driving under the influence of alcohol and was sentenced to one year of probation and required to complete a rehabilitation program. (Case 99-12-0032). The record shows that the applicant had previously had his driving privileges revoked by the court in on January 24, 1992 after he was “discharged from probation as unimproved” following his first committed offense for driving under the influence. (Case 92-01-0446T).

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record reflects that the on the applicant’s Form I-485 application, which he signed under penalty of perjury on February 25, 1998, the applicant indicated that he had never been arrested. When questioned under oath at his interview on September 2, 1998 if he had ever been arrested, the applicant again responded that he had not. Counsel does not dispute on appeal that the applicant knowingly “lied” by claiming never to have been arrested, but maintains that he did so only on the advice of a friend that disclosure of the applicant’s criminal record would lead to his deportation.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if –

....

(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 both section 212(i) and section 212(h) of the Act provide 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. In this case, the only relative that qualifies under both sections is the applicant's wife. 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, 565-66 (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 to a qualifying relative. The factors include 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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).

The AAO notes that in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, "the most important single hardship factor may be the separation of the alien from family

living in the United States”, and that, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” (Citations omitted.)

The AAO notes further, however, that 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, 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 *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove 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.

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 or 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.

On appeal, counsel asserts that if the applicant’s spouse chooses not to accompany the applicant to Mexico she would suffer extreme emotional hardship from being separated from him after 11 years of being together. Counsel also contends that the applicant’s spouse would be deprived of the applicant’s financial support and would not be able to support herself and her 19-year-old U.S. citizen son on her income alone. She would likely have to give up her car and home. Counsel asserts that the applicant’s spouse would experience extreme hardship if she returned to Mexico with the applicant because the quality of life is significantly worse there. The applicant’s spouse would also suffer emotional hardship from being separated from her brother and sisters that reside in the United States. In support of these assertions, counsel has submitted an affidavit from the applicant’s spouse. The record also contains tax and employment records for the applicant and his spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

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 spouse faces extreme hardship if her husband is not granted a waiver of inadmissibility.

The AAO recognizes that the applicant’s spouse would suffer emotionally as a result of separation from the applicant if she chooses to remain in the United States. However, her situation is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

Counsel has asserted that [REDACTED] would suffer financially as a result of the loss of the applicant's income, but has not submitted specific evidence showing the applicant's current income and the extent to which his spouse relies on this income. The most recent information in the record concerning the applicant's employment and income are records from the year 1998. Although the statements of counsel and the applicant's spouse are relevant and have been taken into consideration, little weight can be afforded them in the absence of specific supporting evidence. *Matter of Kwan*, 14 I & N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)).

Finally, the applicant has failed to submit sufficient evidence showing that his spouse would experience extreme hardship if she relocated to Mexico with the applicant. The AAO recognizes that the applicant's spouse will suffer emotionally from being separated from members of her immediate family residing in the United States, but the applicant has failed to demonstrate that her situation is atypical of individuals separated as a result of removal or inadmissibility. The mere assertion by counsel that the applicant's spouse will suffer in Mexico because life is significantly worse there is not sufficient to meet the applicant's burden of proof. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant'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 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 failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) and 212(h) of the Act. 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(i), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. *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.