

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

A2

FILE:

Office: MIAMI

Date:

SEP 10 2007

IN RE:

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:

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, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Colombia 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 a crime involving moral turpitude (Uttering Forged Bills). The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his spouse, [REDACTED], a U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his spouse and child.

The applicant and [REDACTED] were married in the United States on December 21, 2001. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on August 15, 2005. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) on November 16, 2005. The applicant's son [REDACTED], was born on August 4, 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 District Director*, dated November 16, 2005.

On appeal, counsel asserts that the evidence shows that the applicant provides, through his employment, medical insurance to his whole family and that if the family moved to another country or if the applicant's spouse remained in the United States, they "would not have the financial resources to face the cost of a private health insurance." Counsel also maintains that separating the applicant from his spouse and child would "destroy [their] emotional and psychological health."

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.

Court documents in the record reflect that the applicant was found guilty in the Circuit Court of the Eleventh Judicial Circuit in Dade County, Florida on April 3, 2002 to Uttering Forged Bills, a third degree felony, in violation of section 831.09 of the Florida Statutes, a crime punishable by up to 5 years of incarceration. *See Fla. Stat. § 775.082*. In conjunction with a plea of nolo contendere, the adjudication of guilt was stayed and the applicant was placed on probation for a period of one year.

The crime of uttering forged instruments has been found not to be a crime involving moral turpitude in some cases, but only when an "intent to defraud" 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). The AAO observes that the intent to defraud is an element of the statute violated by the applicant. *See Fla. Stat. § 831.09* ("Whoever utters or passes or tenders in payment as true, any such false,

altered, forged, or counterfeit note . . . knowing the same to be false, altered, forged, or counterfeit, with *intent to injure or defraud any person*, commits a felony of the third degree . . .) (emphasis added). The applicant has not disputed that this offense is a crime involving moral turpitude that renders him inadmissible.

Court documents in the record also show that the applicant was arrested and charged in the Circuit Court of the Eleventh Judicial Circuit in Dade County, Florida on September 2, 1999 with Third Degree Grand Theft of a Vehicle in violation of section 812.014(2)(C)(6) of the Florida Statutes, but prosecution was discontinued on July 21, 2000.

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

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 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, 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.

As indicated above, counsel asserts on appeal that the evidence shows that the applicant provides, through his employment, medical insurance to his whole family and that if the family moved to another country or if the applicant’s spouse remained in the United States, they “would not have the financial resources to face the cost of a private health insurance.” Counsel also maintains that separating the applicant from his spouse and child would “destroy [their] emotional and psychological health.”

The record includes documentation of the applicant’s criminal record; an affidavit from the applicant’s spouse; tax, employment and other financial records for the applicant and his spouse; documentation of medical insurance for the applicant; a copy of an application for a Florida birth record for the applicant’s son and family photographs. 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 and child face extreme hardship if the applicant 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, but there is insufficient evidence in the record demonstrating that her situation is atypical 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 the applicant's spouse and child would suffer financially without the health insurance provided by the applicant's employer, but has not submitted specific evidence showing the nature and extent of any hardship the loss of this coverage would have on them. The record shows that the applicant's spouse is employed as a dental assistant. There is no evidence showing that she does not or cannot obtain health insurance through her employer, or that she would be unable to meet her financial obligations if she had to obtain private health insurance. Although counsel's statements 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 submitted no evidence demonstrating that his spouse and child would suffer extreme hardship if they relocated to Colombia with him.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, 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 and child as required under section 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(h), 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.