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

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FILE: [REDACTED]

Office: LOS ANGELES, CA

Date:

AUG 12 2008

IN RE: Applicant:



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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Mexico, was found 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. The applicant sought 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 naturalized U.S. citizen father.

The district director concluded that that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated April 7, 2006.

In support of the appeal, counsel submits a brief and a declaration from the applicant's U.S. citizen father, dated May 3, 2006. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2)(A)(i)(I) of the Act provides, in pertinent part:

[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:

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 . . .¹

¹ The AAO notes that section 212(h) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. If extreme hardship is established, CIS must then assess whether to exercise discretion.

Regarding the applicant's grounds of inadmissibility, the record reflects the commission of crimes involving moral turpitude. On April 25, 2005, the applicant was convicted of two counts of Burglary and one count of Attempted Second Degree Burglary, violations of section 459 and 664/459 respectively of the California Penal Code, based on an April 21, 2005 incident. As the aforementioned crimes were committed after the applicant's eighteenth birthday, the district director correctly found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant was not sentenced to an aggregate confinement of five years or more; he is thus eligible to apply for a section 212(h) waiver of the bar to admission.

A section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the inadmissibility bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son or daughter of the applicant. The only relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen father.

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 O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) the BIA held that:

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.

This matter arises in the Los Angeles district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated: "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[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." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

Counsel contends that the applicant's U.S. citizen father will suffer extreme emotional and/or psychological hardship if the applicant were removed. The applicant's father states as follows:

...My son [redacted] [the applicant] has lived with me all of his life. My son [redacted] also lived with us but he joined the Army in 2003. [redacted] is currently in Iraq for a second tour of duty. He is twenty years old. The other children that are living with me are [redacted] age 18, [redacted] age 15, [redacted] age 5. My two girls are traumatized by the fact that [redacted] is detained. They are very close. It causes me a lot of stress and depression not only that my son is detained, but that my two girls are also traumatized. If [redacted] is deported I would be

very depressed, because he helps the girls with their homework. He also helps me maintain the house....

Declaration of [REDACTED] dated May 3, 2006.

No objective documentation has been provided by a licensed mental health professional to corroborate the applicant's father's statements that his daughters are suffering extreme emotional hardship due to the applicant's immigration situation and that he, as the applicant's father, will suffer extreme emotional hardship due to the applicant's relocation abroad due to his immigration violations, in light of the fact that the applicant's sibling is stationed in Iraq during a time of war. 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)).

Moreover, the record indicates that the applicant's mother resides in the United States. It has not been established that she would be unable to assist the applicant's father with respect to the maintenance of the household and the care of the applicant's siblings. Finally, counsel does not explain why the applicant would be unable to obtain employment abroad and assist his father with the maintenance of the household and the care of his siblings, should the need arise.

While the applicant's father may need to make other arrangements with respect to his younger children's continued care and the upkeep of the household, counsel has not established that any new arrangements for the psychological, emotional and financial care of the children and the continued daily maintenance of the household would cause extreme hardship to the applicant's father.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, 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 and familial and emotional bonds exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates with the applicant abroad based on the denial of the applicant's waiver request. In this case, the only statement to reference this prong of the extreme hardship analysis is counsel's statement that in Mexico [the applicant's home country] "...the possibilities of pursuing an education, employment, medical care and standard of living are substandard, and in aggregate can amount to extreme hardship...." *Brief in Support of Appeal*. 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).

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen father would suffer extreme hardship if the applicant were removed from the United States, and moreover, the applicant has failed to show that his U.S. citizen father would suffer extreme hardship were he to relocate to another country along with the applicant when he is removed from the United States. 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. The waiver application is denied.