

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. A3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

7/2



FILE: [REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: **MAR 24 2008**

IN RE: Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h)

ON BEHALF OF PETITIONER:



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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Canada who entered the United States as a visitor on December 14, 2001. The applicant 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 two crimes involving moral turpitude (theft and uttering a death threat). The record indicates that the applicant is married to a U.S. citizen and that he is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility in order to reside with his wife and children in the United States.

The director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse or children. The application was denied accordingly. *See Service Center Director Decision*, dated March 10, 2006.

On appeal, counsel asserts, “[a]lthough extreme hardship is not specifically defined in statutes, the Board of Immigration Appeals (BIA) has consistently held that INA § 212(h) waiver requires a balancing of favorable and unfavorable factors as used with the former 212(c) waiver.” Counsel relies upon *Matter of Marin*, 16 I & N Dec. 681 (BIA 1978) and *Matter of Jean*, 23 I & N Dec. 373 (A.G. 2002), to support the claim that humanitarian, family unity, and public interest factors must be weighed against the seriousness of the crime that rendered the individual inadmissible. Counsel further asserts that Citizenship and Immigration Services (“CIS”) abused its discretion by failing to thoroughly analyze the facts and evidence in the case, including evidence of extreme emotional and financial hardship to the applicant’s wife and children. Specifically, counsel states that information concerning the applicant’s length of residence in the United States, his position in the community, and his immigration history was not addressed in the decision. Further, counsel asserts that the negative factors in the case are outweighed by the positive factors, including family ties in the United States, economic factors, and evidence of the potential psychological effects of the applicant’s removal.

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.

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]he 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 theft in February 1998 and uttering a death threat in March 1998 and the criminal conduct took place from December 1997 to March 1998. *See Exhibit 3*. According to information submitted with the waiver application, the *mens rea* of this crime under Canadian law is that the words are “meant to intimidate or be taken seriously,” and that they would convey to a reasonable person a threat of serious bodily harm. *See legal opinion of [REDACTED], Exhibit 4*. The Board of Immigration Appeals (BIA) has held that crimes involving threatening behavior, including aggravated stalking that causes another to feel great fear, involve moral turpitude. *Matter of Ajami*, 22 I & N. Dec. 949 (BIA 1999) (stating, “the intentional transmission of threats is evidence of a vicious motive or a corrupt mind.”); see also *Matter of B-*, 6 I&N Dec. 98 (BIA 1954) (involving usury by intimidation and threats of bodily harm); *Matter of C-*, 5 I&N Dec. 370 (BIA 1953) (involving threats to take property by force); *Matter of G-T-*, 4 I&N Dec. 446 (BIA 1951) (involving the sending of threatening letters with the intent to extort money). As the applicant was convicted of threatening another individual in a manner that would cause fear of serious bodily harm, the crime constitutes a crime involving moral turpitude. This conviction, in addition to his conviction for theft, which also involves moral turpitude, renders the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Since less than 15 years have passed since the criminal activity for which he was convicted, the applicant is statutorily ineligible for a waiver pursuant to section 212(h)(1)(A) of the Act. He is, however, eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(1)(B) of the Act.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish 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.

Counsel’s assertion that assessing a claim of extreme hardship requires a balancing of favorable and unfavorable factors, including the seriousness of the applicant’s criminal conduct, is unconvincing. Counsel refers to the BIA decision in *Matter of Marin, supra*, and states that the BIA requires the same balancing of positive and negative factors for waivers under INA section 212(h) as for waivers under the former INA section 212(c). A waiver under INA section 212(c) does not, however, require a showing of extreme hardship, but only requires that the individual merit this relief as a matter of discretion. A waiver under INA section 212(h) is also discretionary, but the applicant must first demonstrate statutory eligibility for this relief by showing extreme hardship to a qualifying relative before the discretionary factors can be addressed. Several of the factors outlined in *Matter of Marin, supra*, and referred to by counsel in the brief in support of the appeal, are relevant only to the exercise of discretion and are not relevant to determining whether the applicant’s wife or children would suffer extreme hardship if he is removed.

In the present case, the record reflects that the applicant is a thirty-four year-old native and citizen of Canada who entered the United States in December 2001 and married his current wife, a U.S. Citizen, on February 15, 2002. The applicant and his wife first met in 1989 when they were teenagers and maintained a long-distance relationship from that time. They have two U.S. Citizen sons who are now five and two years old. Counsel submitted documentation indicating that the applicant and his wife own their home in Florida and that the applicant works as a mortgage broker. *See Exhibits 11 and 13*. According an affidavit prepared by the applicant’s wife, she works part-time as a paralegal and stays home with their children part-time and her parents live near their home in Florida. *See Exhibits 1 and 15*.

The service center director concluded that, although the applicant asserted that his U.S. Citizen spouse and child would suffer emotional and financial hardship if the applicant had to leave the United States, it had not been proven that the expected hardships were anything other than those normally experienced when families are separated. The director further concluded that any hardship they would experience if they were to accompany the applicant to Canada would be the result of their choice to accompany him, as they would not be required to leave the United States to live with him. The director also found that a statement in a psychological evaluation that the applicant’s wife would suffer significantly should her husband be deported was an assumption of the psychologist, and that it had not been proven that this hardship would be anything other than that normally experienced by family members who have been separated.

Counsel asserts that if the applicant were to return to Canada, his family would suffer financially because he would not be able to provide for his family as well as he does in the United States. *See Counsel’s Brief in support of appeal at 14*. 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. Counsel further states, “without her husband’s financial support [REDACTED] would be

compelled to sell their home and return to work full-time, which would necessitate placing the children in an unfamiliar child care situation.” See *Brief at 11*. There is no evidence on the record to support a finding that the applicant could not continue to support his family financially if he resided in Canada. The applicant graduated from a Canadian university and has worked since 2002 as a mortgage broker in Florida. Nothing in the record supports a finding that he would be unable to find comparable work and support his family if he were to return to Canada or that his wife would be forced to sell their home. 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).

Counsel submitted an affidavit prepared by the applicant’s wife stating that she and her son would suffer extreme hardship if the applicant were removed from the United States and they were separated. She further stated that they would be deprived of the applicant’s emotional and financial support and their son would have to grow up without a father. See *Affidavit of [REDACTED] Exhibit 1*. Counsel also submitted an evaluation prepared by a psychologist indicating that the applicant’s wife would suffer significantly if her husband were deported. See *Psychological Evaluation prepared by [REDACTED] dated January 20, 2003, Exhibit 15*. The input of any mental health professional is respected and valuable in assessing a claim of emotional hardship. However, the AAO notes that although the submitted letter is based on psychological testing of the applicant’s wife, the record fails to reflect an ongoing relationship between a mental health professional and the applicant’s wife. In fact, the same evaluation dated January 20, 2003, was submitted with the original waiver application and with the appeal in May 2006, suggesting that there has been no further evaluation or treatment of the applicant’s wife since that date. The conclusions reached in the submitted evaluation, being based on a single interview conducted in January 2003, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist’s findings speculative and diminishing the evaluation’s value to a determination of extreme hardship.

The AAO notes that the psychological evaluation of the applicant’s wife does not state that she is experiencing or would be expected to suffer any serious psychological effects if her husband were deported, but states that she is resilient and able to cope. The evidence does not establish that any emotional hardship the applicant’s wife would suffer is more serious than the type of hardship a family member would normally suffer when faced with the prospect of separation. Although the depth of her concern over the applicant’s potential deportation is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation 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, and thus the familial and emotional bonds, exists. “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984)

Counsel states that if the applicant’s wife were to relocate to Canada, she would be separated from her family members in the United States, and relocation from Florida would be a “cultural and climactic [sic] adjustment.” Counsel further states that she would not be able to work as a paralegal in Canada because the

legal system is “distinctly different” and she would have to re-educate herself. In her affidavit the applicant’s wife also states that she would be unable to find a job in her field in Canada because her legal experience is in Florida law and not Canadian law. *See Exhibit 1*. The AAO notes that evidence indicates the applicant’s wife has a university degree in psychology, but that nothing in the record indicates she has any specialized legal education. *See Psychological Evaluation prepared by [REDACTED], Exhibit 15*. It appears she began working as a paralegal without any specialized education in this field, and nothing in the record indicates she could not find similar employment in Canada. The psychological evaluation of the applicant’s wife states that relocating to Canada with her husband “would inflict a trauma that would require years for recovery.” *See Exhibit 15*. However, as stated above, the fact that the conclusions reached in this evaluation are based on a single interview, rather than an established relationship with the psychologist, diminishes their value to the determination of extreme hardship. Further, the evaluation indicates the applicant’s wife is resilient and able to cope, and does not indicate that she suffers from any psychological or emotional condition that would prevent her from coping with the effects of relocating to Canada.

Counsel has not specifically asserted that it would constitute extreme hardship for the applicant’s two young children to move to Canada, but states that the applicant’s children would grow up without knowing their maternal grandparents or other family members in the United States. Although relocating would prevent them from seeing them as frequently as they do now, there is no evidence that they would not be able to travel to Florida to visit their grandparents. The applicant’s children are young and there is no evidence in the record to support a finding that it would constitute extreme hardship for them to move to Canada. There is no evidence that they would be deprived of the same level of education, healthcare, or standard of living that they enjoy in the United States. Further, they would still be able to visit their grandparents in the United States and would have grandparents and a brother, the applicant’s son from a previous relationship in Canada. *See Exhibit 1*.

The emotional and financial hardship the applicant’s wife and children would suffer, while unfortunate, appears to be the type of hardship that family members would normally suffer as a result of deportation or exclusion. 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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. The court in *Hassan v. INS, supra*, further held that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

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 has failed to establish extreme hardship to his U.S. Citizen wife and children 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 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.