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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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MAY 15 2008

FILE:

[REDACTED]

Office: SAN FRANCISCO, CA

Date:

IN RE: Applicant:

[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 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant, a native and citizen of Nicaragua, 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 spouse and lawful permanent resident son, born in September 1986.

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 March 19, 2004.

In support of the appeal, counsel submits a brief, dated April 19, 2004; court documents relating to the applicant; evidence of the applicant's son's lawful permanent resident status; and a copy and translation of the applicant's son's birth certificate. 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 multiple crimes involving moral turpitude. In April 1992, the applicant was convicted of Driving under the Influence and Driving When Privilege Revoked or Suspended for Other Reasons, violations of section 23152 and 14601.1 respectively, of the California Vehicle Code, based on a March 1992 incident. On July 31, 1992, the applicant was convicted of Willful Infliction of Corporal Punishment of a Spouse/Cohabitant, a violation of section 273.5(a) of the California Penal Code, based on a July 1992 incident.² On August 10, 2000, the applicant plead no contest to Assault with Deadly Weapon or Force Likely to Produce Great Bodily Injury, a violation of section 245(a)(1), based on incidents between April 22, 1991 and August 1, 1997.³ 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 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. Hardship the applicant himself experiences upon removal is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen spouse and lawful permanent resident son.

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 San Francisco 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

² The record indicates that on July 10, 1996, the applicant was charged with Vandalism, a violation of section 594(a) of the California Penal Code, based on a July 1996 incident. The record is unclear as to whether the applicant was convicted for purposes of an inadmissibility finding, as the charge was ultimately dismissed because he successfully completed a diversionary program. Moreover, it is unclear that vandalism, as defined in the California Penal Code, is a crime of moral turpitude. Nevertheless, as the AAO has concluded that the above-referenced convictions are crimes of moral turpitude, a waiver of inadmissibility for the applicant remains a requisite.

³ The AAO notes that the applicant does not dispute the district director's finding that the above-referenced offenses constituted crimes involving moral turpitude.

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 first contends that the applicant’s spouse will suffer financial hardship if the applicant were removed. The applicant states as follows:

...If I am deported my...wife will suffer extreme hardship. We own our home in Richmond and the monthly mortgage and taxes are \$1,925.00. My wife and I pay for this ourselves as all of our children are married and have their own family obligations. We also have a monthly vehicle payment of \$360.00 and my wife needs that vehicle to get to work....As can be seen, without my income my wife would lose her home, her vehicle, and her job....

Declaration of [REDACTED], dated July 18, 2003.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, “[e]conomic disadvantage alone does not constitute “extreme hardship.” *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that “lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.”); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, “the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one’s home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent’s circumstances.”); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

In this case, counsel has provided no evidence with the appeal that establishes the applicant’s current financial contributions to the household, and thus has failed to show that the applicant’s absence, and the subsequent loss of the applicant’s income, will cause extreme financial hardship to the applicant’s spouse. Moreover, counsel does not explain why the applicant would be unable to obtain employment abroad and assist in supporting his spouse were he removed. Finally, it has not been established that the applicant’s lawful permanent resident adult son would be unable to assist the applicant’s spouse financially should the need arise. While the applicant’s spouse may need to make alternate arrangements with respect to her job and the household finances, it has not been shown that such alternate arrangements would cause her extreme hardship.

The applicant's spouse further states that she will suffer "...an exceptional and extremely unusual hardship if my husband were removed..." *Declaration of [REDACTED]* dated August 25, 2003. No documentation has been provided that further outlines the hardships the applicant's spouse would face were the applicant removed from the United States. 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)).

As for the applicant's lawful permanent resident adult son, the only reference made with respect to the hardships he would face were the applicant removed from the United States is a statement from counsel. As counsel states "...[REDACTED] s [the applicant's] son recently arrived in the United States and if he were to be immediately separated from his father while age seventeen, this creates presumptively an extreme hardship..." *Brief in Support of Appeal*, dated April 19, 2004. Counsel fails to document what specific hardships the applicant's son would face without the applicant's presence, in light of the fact that the record does not provide any indication of what, if any support, the applicant has previously provided to his son, whether it be financial and/or emotional. 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). While the applicant's son, now almost twenty-two years old, may need to make other arrangements with respect to his own care, counsel has not established that any new arrangements would cause extreme hardship to the applicant's son.

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 thus the 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, no evidence has been provided to explain why the applicant's spouse and/or adult son are unable to accompany the applicant to Nicaragua, or any other country of their choosing.

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 spouse and/or lawful permanent resident son would suffer extreme hardship if he were removed from the United States, and moreover, the applicant has failed to show that his U.S. citizen spouse and/or lawful permanent resident son would suffer extreme hardship were they to relocate to another country were the applicant 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.