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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, CALIFORNIA Date: OCT 29 2008

IN RE: [REDACTED]

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure an immigration benefit by fraud or willful misrepresentation of a material fact, and section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude (felony arson). The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(h) of the Act, 8 U.S.C. §§ 1182(i) and (h), in order to remain in the United States with his spouse and daughter.

The district director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Decision of District Director* dated June 5, 2006.

On appeal, the applicant asserts that his wife would suffer extreme emotional and financial hardship if he were removed from the United States. *See Applicant's Letter in Support of Appeal* dated December 11, 2006. Specifically, the applicant states that his mother-in-law's health is failing and his wife is unable to work because she must care for her mother. *See Affidavit of* [REDACTED] dated December 18, 2006. In support of the waiver application and appeal, the applicant submitted affidavits from his wife, copies of his wife's birth and naturalization certificates and their marriage certificate, a copy of their daughter's birth certificate, a letter from the applicant's employer, copies of health insurance cards, a copy of the deed to their home, copies of his mother-in-law's medical records, and letters from friends and family members. The entire record was reviewed and considered in arriving at a decision on the appeal.

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:

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.

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

(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.

Section 212(i) of the Act provides:

(1) The [Secretary] may, in the discretion of the [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 [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.

The applicant was convicted of Felony Arson in violation of section 452(c) of the California Penal Code on July 12, 1994 in Los Angeles County, California. The record does not contain an arrest report or other documentation indicating when the underlying conduct took place, so the AAO is not able to determine whether the crime involving moral turpitude for which the applicant was found inadmissible occurred more than 15 years prior to the applicant's application for admission. It is therefore not clear whether the applicant is now statutorily eligible for a waiver pursuant to section 212(h)(1)(A) rather than section 212(h)(1)(B) of the Act.

The applicant was also found inadmissible under section 212(a)(6)(C)(i) of the Act for failing to disclose his arrest and conviction for arson when interviewed by an immigration officer in connection with his application for adjustment of status on October 22, 2002. As the conviction for felony arson, a crime involving moral turpitude, rendered the applicant inadmissible under section 212(a)(2)(i)(I) of the Act, the failure to disclose this fact when asked by an immigration officer about any criminal history constitutes a material representation and renders the applicant inadmissible under section 212(a)(6)(i) of the Act.

The AAO notes that the record contains references to the hardship that the applicant's U.S. Citizen daughter would suffer if the applicant were removed from the United States. Section 212(i) of the Act provides that a waiver of section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. It is noted that Congress did not include

hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver pursuant to section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (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. 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 (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 addition, in *Perez v. INS*, 96 F.3d 390 (9th 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. Moreover, the U.S. Supreme Court additionally 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.

In the present case, the record reflects that the applicant is a thirty-five year-old native and citizen of Mexico who has resided in the United States since 1990, when he entered without inspection. The applicant's wife is a thirty-three year-old native of Mexico and citizen of the United States. The applicant and his wife reside in Los Angeles, California with their eleven year-old U.S. Citizen daughter.

The applicant asserts that his wife would suffer extreme hardship if he were removed from the United States because she must care for her mother, who suffers from various medical conditions, and would be unable to work and pay the family's expenses. In her affidavit, the applicant's wife states,

I am unable to work due to my U.S. citizen mother's poor health condition. My U.S. citizen mother suffers from Hypertension, Anxiety Attacks, and Type II Diabetes. As I am her only daughter my mother depends on me to provide transportation and to assist her with her medications. The care I provide for my mother, in addition to my regular duties at home, occupy all my time so I am unable to work and support my family. If I were to work, my mother's health would deteriorate due to neglect. *Affidavit of [REDACTED]* dated December 18, 2006.

The applicant's wife further states that she would be unable to pay the family's expenses of about \$4100 per month, which include a mortgage payment, property taxes, homeowner's insurance, food, clothing, transportation, and health insurance, without the applicant's income. *Affidavit of* [REDACTED]

The applicant asserts that his wife is unable to work because she must care for her mother, and therefore his removal would result in extreme financial hardship to his wife. In support of this assertion the applicant submitted numerous medical records for his mother-in-law. They consist of test results and progress reports prepared by her doctor, most of which are illegible or unintelligible because they contain abbreviations and medical terminology. The record contains no specific information concerning her medical condition, such as a letter in plain language from her physician describing the exact nature and severity of her condition, any treatment necessary, and any family assistance needed. Without more detailed information, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment and assistance needed. The evidence on the record is therefore insufficient to establish that the applicant's wife is unable to work and pay the family's expenses. Further, no documentation of their mortgage, insurance payments, or other family expenses was submitted. 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)).

The applicant's wife also states in her affidavit that she would suffer extreme emotional hardship if she is separated from him, but there is no evidence provided concerning her mental health or the potential emotional or psychological effects of such a separation. The evidence on the record does not establish that the emotional effects of separation from the applicant would be more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's removal or exclusion. Although the depth of her distress over the prospect of being separated from her husband is not in question, a waiver of inadmissibility is available only where the resulting hardship would be unusual or beyond that which would normally be expected upon removal or exclusion. The prospect of separation or involuntary relocation nearly 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 exists.

No information or evidence was submitted to support a finding that the applicant's wife would suffer extreme hardship if she relocated to Mexico with the applicant. A significant medical condition of the applicant's mother-in-law, who is not a qualifying relative for the waiver, could contribute to emotional hardship to the applicant's wife if she were separated from her mother and unable to care for her. As noted above, however, the medical records submitted are insufficient to establish that her condition is severe enough to cause such hardship to the applicant's wife. Further, no other evidence, such as documentation concerning conditions in Mexico, was submitted. Therefore, the record does not establish that the applicant's wife would suffer extreme hardship if she relocated to Mexico with the applicant.

It appears from the record that any emotional or financial hardship to the applicant's wife would be the type of hardship that family members would normally suffer as a result of removal or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that

was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship).

A review of the documentation in the record reflects that the applicant has failed to show that the hardships faced by the qualifying relative, when considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. 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(i) 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.