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U.S. Department of Homeland Security
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H-2

[Redacted]

FILE:

Office: LOS ANGELES, CA

Date:

JAN 16 2009

IN RE:

[Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the
Immigration and Nationality Act (INA), 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in black ink that reads "Michael Shumway".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. The matter 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 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 crimes involving moral turpitude. The record indicates that the applicant has a lawful permanent resident spouse and seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with her spouse in the United States.¹

The district director based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's conviction for two counts of Bribery of a Witness, committed on or about March 25, 1994. The district director found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *District Director's Decision*, dated May 17, 2005.

On appeal, counsel asserts that the district director erred in her determination that the affidavits and evidence in the record did not support a finding that the applicant's spouse would suffer extreme hardship. *Notice of Appeal (Form I-290B)*, undated.

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) of the Act provides, in pertinent part, that:

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) (A) . . . it is established to the satisfaction of the Attorney General that –

(i) . . . the 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,

¹ The AAO notes that counsel's brief states that the applicant has three sons, one of whom is a lawful permanent resident. However, the record does not contain documentation to establish this fact.

(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 record indicates that the applicant was convicted of two counts of Bribery of a Witness under California Penal Code §137(A) on May 20, 1995 for events that occurred on or around March 25, 1994. She was sentenced to six months in prison for each count, to be served consecutively. The AAO notes that Bribery is a crime involving moral turpitude. *See Matter of R-*, 1 I & N Dec. 118 (BIA 1941). Counsel has not disputed that the applicant's convictions are for crimes involving moral turpitude that render the applicant inadmissible under section 212(a)(2)(A) of Act.

Because the events that led to the applicant's convictions occurred less than 15 years from the present time, she is statutorily ineligible for a waiver pursuant to section 212(h)(1)(A) of the Act.² However, she is eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(1)(B) of the Act.

A section 212(h)(1)(B) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on a "qualifying relative," *i.e.*, the U.S. citizen or lawfully resident spouse, parent or son or daughter of the applicant. Hardship to the applicant is not considered in section 212(h) waiver proceedings and will be considered only insofar as it results in hardship to a qualifying relative in the application. If extreme hardship to a qualifying relative is established, in this case the applicant's lawful permanent resident husband the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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 Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the

² The AAO notes that as of March 26, 2009 the applicant will be eligible to apply for a waiver under section 212(h)(1)(A) of the Act.

United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

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).

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); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to 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 appropriate weight in the assessment of hardship factors in the present case.

The AAO notes that extreme hardship to the applicant’s spouse must be established in the event that he relocates to Mexico and in the event that he remains in the United States, as he is not required to reside outside of the United States based on the denial of the applicant’s waiver request. The AAO will consider the relevant factors in adjudication of this case.

Counsel states that the applicant and her spouse have been married since 1969 and that they have three sons and seven grandchildren in the United States. *Counsel’s Brief*, dated July 12, 2006. Counsel states that the applicant’s spouse is seventy-one years old, has lived in the United States for over twenty years, recently underwent eye surgery and because of his advanced age requires the presence of the applicant for his care and emotional support. Counsel asserts that as the applicant’s spouse grows older and continues to suffer the effects of time and age, his need for the assistance and care from his wife will grow. As a result, the applicant’s spouse will greatly suffer if he is permanently separated from the applicant. Counsel further states that the applicant’s spouse is retired, lives on a fixed income of \$438 dollars per month, and would not be able to pay for his expenses in addition to future medical care and home care if he loses the support of the applicant. In addition, counsel states that it would be very difficult, if not impossible for the applicant’s spouse to visit the applicant if the applicant were removed, resulting in permanent separation. The applicant’s spouse states that he and the applicant have three sons who live in the United States and seven grandchildren. *Spouse’s Declaration*, dated March 13, 2006. He states that he has been living in the United States since 1985 and that he and the applicant now live with their son and his family. He

states that they help his son's family with buying their home by paying rent. He states that he receives a monthly social security check of \$438 and that his overall health is good, except that he recently had surgery on his eye. He states that it would be an extreme hardship for him if the applicant is found to be inadmissible. He states that he is seventy-one years old and needs the applicant by his side so they can care for each other for the rest of their lives. Finally, he states that he and the applicant have always been together, cannot be apart and that they need each other and their family needs both of them. *Id.* In addition to the spouse's declaration the record contains a letter from the President of the applicant's church. [REDACTED] states that the applicant has been a member in good standing in their Church Fellowship since 1990 and that she sets a good example as a believer. *Letter from Church*, dated March 9, 2006.

The AAO finds that the current record does not establish that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility. Counsel's assertions regarding the applicant's spouse's need for care are unfounded. The applicant's spouse states that he is in overall good health and that he and the applicant live with their son and his family. The record does not show that the applicant's spouse requires help with his everyday activities and if he did require care, the record does not show that his son and/or son's family could not provide this care in the applicant's absence. In addition, the record does not show that the applicant supports her spouse financially or that their son could not help with the applicant's spouse's finances. Furthermore, the record does not show that the applicant's spouse could not relocate to Mexico with the applicant. The AAO recognizes that the applicant's spouse is seventy-one years old, but the record does not show why this would preclude him from relocating to Mexico with the applicant. The applicant and his spouse resided in Mexico for most of their lives and they currently reside in southern California, in proximity to the Mexican border. In addition, the record does not establish that the applicant's spouse would not be able to visit the applicant in Mexico. Thus, counsel's assertions regarding permanent separation are also unfounded.

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). Going on record without supporting documentary evidence is not sufficient for the 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)).

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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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, *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. *Hassan v. INS*, *supra*, held further 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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. *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.