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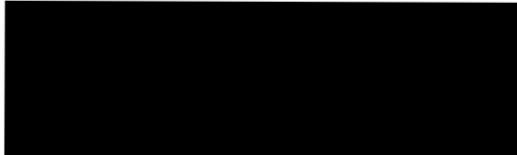
**JUL 31 2009**

IN RE:



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.

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).

John F. Grissom

Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico. She was found to be inadmissible to the United States pursuant to 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 (CIMT). The applicant is the daughter of a U.S. citizen and mother of three U.S. citizen children. The applicant seeks 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.

The District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on March 12, 2007.

On appeal, counsel asserts that the applicant has established that her father and three U.S. citizen children will suffer extreme hardship if she is excluded from the United States.

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:

(h) The Attorney General 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 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 reflects that the applicant, using the alias [REDACTED] pled guilty to an amended charge of Theft, Arizona Revised Statute 13-1802(A)(1), in the Maricopa County Justice Court, Arizona on July 6, 1993. [REDACTED] Theft is a Crime Involving Moral Turpitude (CIMT). *Matter of D*, 1 I&N Dec. 143 (BIA 1941). Thus the applicant has been convicted of a CIMT and is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I). The applicant does not contest these findings.

A waiver of inadmissibility under section 212(h) 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 child of the applicant. Hardship to the applicant is not directly relevant to the determination of extreme hardship under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen father and children are the qualifying relatives in this proceeding. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted.

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 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).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record of proceeding contains the following relevant documents: counsel's brief; a statement from the applicant; U.S. birth certificates for the applicant's three children; a copy of her father's naturalization certificate; letters from acquaintances of the applicant; copies of medical records for the applicant and her children; school records for the applicant's children; copies of mortgage and utility bills for the applicant.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

On appeal counsel asserts that the applicant's father and children will suffer extreme hardship if the applicant is excluded from the United States. Counsel states that the applicant's father relies on the applicant for support and affection. Counsel further contends that the applicant's father would have

to support two separate households if his daughter were excluded from the United States as she would be unable to obtain employment in Mexico. Counsel also asserts that the applicant's father would have to quit his job in order to care for the applicant's children. The applicant's children, counsel contends, would lose the person who has been mother and father to them if the applicant were to be removed to Mexico.

The record fails to support counsel's claims. While the AAO acknowledges that the applicant's removal would have an emotional impact on her family, there is no documentary evidence in the record, e.g., evaluations performed by a licensed medical professional, that demonstrates that it would result in extreme emotional hardship for her father or her children. Neither does the record indicate that the applicant's father or children suffer from any medical condition that would be adversely affected by the applicant's absence. The AAO also notes that the record does not demonstrate that the applicant's father would be required to support her in Mexico as it does not document, e.g., country conditions reports on the Mexican economy or employment conditions, that the applicant would be unable to obtain employment in Mexico, thereby allowing her to provide for herself and financially assist her children in the United States. Neither does the record offer any documentary evidence that establishes that caring for the applicant's children, who are 15, 12 and 5 years of age, would create a financial hardship for the applicant's father or require him to quit his job. 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).

The AAO acknowledges the medical documentation in the record that establishes that the applicant has been found to have what is described as an "innocuous lesion" adjacent to her brainstem. However, this documentation fails to indicate the severity of this condition, its impact on the applicant's ability to function in her daily life or whether it is progressive. Moreover, hardship to the applicant is not directly relevant to a determination of extreme hardship in these proceedings and the record fails to include any evidence that would demonstrate how the applicant's medical condition affects her father or her children. Accordingly, the AAO does not find the applicant to have demonstrated that her father or children would suffer extreme hardship if she were to be excluded and they continued to reside in the United States.

As previously noted, the applicant must also establish that a qualifying relative would experience extreme hardship if he or she moved to Mexico with the applicant. Counsel asserts that the applicant's father has very few ties to Mexico and that her children would have to work or be forced into poverty if they moved to Mexico. Counsel also states that the principal language of the applicant's U.S. citizen children is English, that they would have difficulty adjusting to academic life in Mexico and would have to begin anew academically if they relocated. While the record fails to establish what impact relocation would have on the applicant's father, the AAO notes that the Board of Immigration Appeals (BIA) has previously found that a 15-year-old child who had lived her entire life in the United States, was completely integrated into the American lifestyle and was not fluent in Chinese would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The BIA concluded that uprooting the child at her stage of education and social development and requiring her to survive in a Chinese-only environment would be such a

significant disruption that it would constitute extreme hardship. The BIA, having found extreme hardship to be established for the 15-year-old determined it unnecessary to consider whether relocation to Taiwan would also constitute extreme hardship for her younger siblings.

In the present matter, the record indicates that the applicant has a son who is 15 years old and daughters who are 12 and 5 years of age. Like the children in *Matter of Kao and Lin*, they have lived their entire lives in the United States and their principal language is English. Relying on the BIA's reasoning in *Matter of Kao and Lin*, the AAO concludes that relocation to Mexico would create a similar disruption in the life of the applicant's 15-year-old son and, therefore, constitute an extreme hardship for him. Therefore, the applicant has established that relocation to Mexico would result in extreme hardship for a qualifying family member.

However, as the record does not also support a finding that the applicant's son would experience extreme hardship if he remained in the United States without the applicant, the record does not support a finding that a qualifying relative of the applicant would face extreme hardship if she is refused admission. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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. The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative as required for a waiver under section 212(h) of the Act. 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 rests with the applicant. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.