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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES, CA (SAN BERNADINO) Date: SEP 0 2 2009

IN RE: [redacted]

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

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 is a native and citizen of Mexico. He 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 Crimes Involving Moral Turpitude (CIMT). The applicant is the husband of a naturalized U.S. citizen and the son of a Lawful Permanent Resident (LPR). 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 his admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on March 7, 2007.

On appeal, counsel states that the applicant's spouse and LPR father will suffer extreme hardship if the applicant 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 –
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> (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 -
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> . . . .
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> (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 has been convicted of violating California Penal Code § 666, Petty Theft With Prior Jail Term, in Los Angeles County Superior Court, on January 24, 2000, [redacted]; and California Penal Code § 490.5(a), Petty Theft of Retail Merchandise, on April 21, 2003, in Riverside County Superior Court, [redacted] **Thus, the applicant has been** convicted of two Crimes Involving Moral Turpitude, 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).[1] *DeMore v. Kim*, 538 U.S. 510 (2003) (alien convicted of two CIMTS; Cal. first degree burglary and petty theft with priors); *see also Matter of Jurado*, 24 I&N Dec. 29, 33-34 (BIA 2006). 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 spouse and LPR father 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).

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[1] The record also reflects that the applicant was convicted of violating California Penal Code § 459, Burglary, on July 23, 1999, in the Municipal Court of Monrovia, Los Angeles County, . Under § 459, an individual who enters a dwelling or other building, or vehicle or conveyance with the intent to commit grand or petit larceny or any felony is guilty of burglary. Burglary is a CIMT only when the crime intended to be committed involves moral turpitude See *Matter of M*, 2 I&N Dec. 721 (BIA 1946). While burglary with intent to commit theft is a CIMT (*Matter of Leyva*, 16 I&N Dec. 118 (BIA 1977)), the record does not provide sufficient evidence to determine what crime the applicant intended to be commit and, therefore, that his conviction for burglary is a conviction for a CIMT. However, as the record already establishes that the applicant has been convicted of two CIMTs, the AAO does not find it necessary for the purposes of this proceeding to conduct an analysis of the applicant's conviction for burglary under *Matter of Cristoval Silva-Trevino*, 24 I&N Dec. 687 (AG 2008) in order to determine whether it is also a CIMT.

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.

U. S. courts have 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). As this case arises within the jurisdiction of the 9th Circuit Court of Appeals, separation of family will be given appropriate weight in the assessment of hardship factors.

The record of proceeding contains the following relevant evidence: Counsel's brief; statements from the applicant, his spouse and his father; marriage, naturalization and birth certificates; a copy of a pill bottle label; a copy of a real estate license for the applicant's spouse; court records for the applicant's criminal convictions; tax records for the applicant and his spouse; and real estate property documentation for the applicant's spouse.

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

On appeal counsel asserts that the applicant's spouse will suffer financial and emotional hardship if she relocates with the applicant. He explains that the applicant's spouse is on medication for depression and anxiety, that the applicant's spouse has a successful career as a real estate agent and several property holdings, has lived in the United States since the age of 12 and has extensive family and community ties to the United States. He further states that the applicant and his spouse would suffer extremely unusual hardship under the discriminatory economic structure of Mexico, would not be able to survive on Mexico's minimum wage and that Mexico's lack of health care would place the applicant's spouse in danger of having her depression and mental health go untreated.

The applicant's spouse states that she has lived in the United States for 36 years and has no family left in Mexico. She also asserts that she has a career and assets that she could not easily abandon and lists the addresses of several properties that she owns. The record contains a copy of a pill bottle label that indicates that the applicant's spouse has been prescribed medication for anxiety. However, the copy of the prescription label does not indicate when the anti-anxiety medication was prescribed and the record does not otherwise document that the applicant's spouse has been diagnosed with depression or anxiety or that she currently suffers from depression or anxiety. As such, counsel's assertion that the applicant's spouse would require treatment for depression in Mexico is not supported by the record. Moreover, the record contains no documentary evidence that treatment for depression and anxiety is not available in Mexico.

Counsel's assertions that the applicant and his spouse would face a dim economic future in Mexico if they relocated with the applicant are also not documented in the record. The AAO notes that

hardship resulting from a lower standard of living, difficulties of readjustment to one's home country and environment, and reduced job opportunities do not rise to the level of constituting an extreme hardship. *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986). The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

As previously noted, the applicant must also establish that his spouse would suffer extreme hardship if she remains in the United States without the applicant.

The applicant's spouse states that the thought of separation from the applicant is causing her great anxiety and that she is currently taking Locazepam. She asserts that her life would spiral out of control if she were to be separated from the applicant. She also indicates that the applicant assists in the support of their household with his income. While the AAO acknowledges the claims made by the applicant's spouse regarding the impact of separation on her mental health, it again observes that the record provides insufficient evidence that she has previously been diagnosed with anxiety by a licensed health care professional or that she currently suffers from anxiety. As previously noted, the copy of the prescription label in the record does not indicate the date on which the applicant's spouse was prescribed anti-anxiety medication and, therefore, is not proof of her current emotional state. The AAO notes the applicant's spouse's claim regarding the applicant's financial contribution to their houehold, but does not find the record to document how the loss of his income would affect his spouse. 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)).

With regard to the applicant's LPR father, counsel asserts that the applicant's father is no longer able to work due to his age, that he will breakdown emotionally if the applicant is excluded, and that the applicant assists his father financially. The applicant also states that he helps support his father and that his father would suffer unbearable distress if he were excluded from the United States. The record, however, does not include any documentation that support's the applicant's claim of providing financial support to his father. Neither does it contain any medical documentation that indicates the applicant's father's emotional state or how he would be affected if he were to be separated from his son. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.* The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above does not support a finding that the applicant's spouse or father would face extreme hardship if he 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. In the present case, the record fails to distinguish the hardship that would be experienced by the applicant's spouse or father from that suffered by other individuals whose spouses and children have been found to be inadmissible to the United States. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse or father under section 212(h) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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.