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U.S. Department of Homeland Security
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, CALIFORNIA

Date: SEP 02 2009

IN RE: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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.

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 record reflects that the applicant is a native and citizen of the United Kingdom who has been found to be inadmissible to the United States pursuant to § 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 arrested and convicted of crimes involving moral turpitude (CIMT). The record indicates that the applicant has a U.S. citizen wife and a U.S. citizen son. He seeks a waiver of inadmissibility in order to reside with his wife and son in the United States.

The district director concluded that the applicant had failed to establish extreme hardship to a qualifying relative and that a favorable exercise of discretion was not warranted. She denied the waiver application on July 1, 2004.

On appeal, counsel for the applicant asserts that the district director abused her discretion in denying the waiver as she failed to give proper weight to the evidence presented, and that the applicant's qualifying relatives would suffer extreme hardship if the applicant were excluded from the United States. The entire record was considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

(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 that:

(h) 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.

The AAO notes that, as the district director found in her decision, the record reflects that the applicant was convicted of a violation of section 211 of the California Penal Code (CPC), 2nd degree robbery, a felony, on February 22, 1994, in the Superior Court of California, County of Los Angeles, California, and was sentenced to 365 days in County Jail and three years probation. The district director concluded that this offense constitutes a crime involving moral turpitude rendering the applicant inadmissible and a crime of violence pursuant to 18 U.S.C. § 16.

The record also contains a court record from the Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California, showing that the applicant was found guilty of a misdemeanor in violation of CPC section 148, Restricting a Police Officer, and was sentenced to three years probation. The applicant's conviction under CPC section 148 is not found to be a conviction for a crime involving moral turpitude.

It is noted for the record that the applicant's conduct resulting in a conviction for 2nd degree robbery occurred more than 15 years ago as of the date this appeal is being adjudicated. Ordinarily a waiver for crimes occurring more than 15 years previously is available under section 212(h)(1)(A)(i). In the present matter, however, the applicant has not only been convicted of a crime involving moral turpitude, but of a crime of violence. *See U.S. v. Becerril-Lopez*, 528 F.3d 1133 (9th Cir. 2008)(holding that a conviction for Robbery under California Penal Code § 211 constitutes a conviction for a crime of violence.) Therefore, he is subject to the regulation at 8 C.F.R. § 212.7(d).

The regulation at 8 C.F.R. § 212.7(d) establishes the circumstances under which a favorable exercise of discretion is warranted in the case of an applicant convicted of a crime of violence:

(d) Criminal grounds of inadmissibility involving violent or dangerous crimes

The Attorney General [now Secretary of Homeland Security], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. § 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application of adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary

circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

The AAO finds that, in the instant case, no national security or foreign policy considerations are involved. Therefore, the applicant must demonstrate that the denial of the waiver would result in an exceptional or unusual hardship to a qualifying relative, in this case the applicant's wife or son.

The concept of exceptional or unusual hardship is addressed by the Board of Immigration Appeals (BIA) in *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001), in which the BIA found that many of the factors that are considered in assessing "extreme hardship" should be considered in evaluating "exceptional and extremely unusual hardship." The BIA held, however, that the hardship suffered by the qualifying relative(s) must be "substantially beyond that which would ordinarily be expected to result from the alien's deportation," but need not be "unconscionable." *Id.* At 59-63.

In determining whether the record establishes that either of the applicant's qualifying relatives would suffer exceptional or unusual hardship as a result of his inadmissibility, the AAO will, therefore, first consider whether the record before it demonstrates extreme hardship to these same individuals.

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 provides a list of factors relevant in 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 the applicant's wife or son must be established whether they reside in England or the United States, as they are not required to reside outside the United States based on the denial of the applicant's waiver request.

The record contains the following relevant evidence:

1. Tax and employment records for the applicant.
2. Tax and employment records for the applicant's spouse.
3. Medical records for the applicant's spouse's mother referencing her medical conditions and her prescribed medications.
4. Affidavit sworn by the applicant's spouse asserting that she would suffer extreme hardship if her husband were excluded from the United States or if she relocated to England with her him.
5. Statement from the applicant.
6. Statement from [REDACTED] attesting to the applicant's spouse's skill as a hairdresser, and stating that it would be devastating for the applicant and his spouse to be separated.
7. Statement from [REDACTED] asserting it would be devastating if the applicant and his spouse were separated.
8. Statement from [REDACTED] the applicant's spouse's mother detailing her medical conditions and stating that it would upset her greatly to see her daughter and the applicant separated.
9. Statement from [REDACTED] requesting the applicant's waiver be granted.

On appeal counsel for the applicant asserts that the district director abused her discretion by failing to give proper weight to the evidence presented, failing to explain her conclusions, and misapplying precedent decisions. While the AAO notes counsel's assertions, it observes that the district director has the authority to construe extreme hardship narrowly and does not have to consider all hardship factors if they are not supported by the record. *INS v. John Ha Wang*, 450 U.S. 139 (1981). In addition, the precedent decisions cited by the district director were not referenced based on parallel fact patterns, but as examples of how courts have defined extreme hardship.

On appeal counsel asserts that the applicant's spouse would suffer extreme hardship if she were to relocate with the applicant to England. Counsel contends that the applicant's spouse would be grief stricken if she were unable to provide her widowed mother with emotional support or were unavailable in the event of a medical emergency. The applicant's spouse asserts she and her mother are close, that she provides for her mother's emotional and medical needs, and that she would be emotionally distraught if she were separated from her mother.

The record does contain evidence that the applicant's spouse's mother has medical conditions, and some evidence of the prescription medications required to treat her conditions and the provision of those medications through the applicant's spouse's medical insurance. While counsel has asserted that U.S. Citizenship and Immigration Services (USCIS) has discounted the importance of the applicant's relationship with her mother, the AAO notes that the claims of emotional devastation by counsel and the applicant's spouse are, by themselves, insufficient to establish the extent of the emotional hardship that would be experienced by the applicant's spouse if she left her mother in the United States. It finds the record to offer no documentary evidence, e.g., an evaluation of the applicant's spouse by a licensed mental health professional, that the emotional impact of a separation from her mother would leave the applicant's spouse emotionally distraught. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The 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 documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *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 spouse asserts that she would also be unable to bear the separation from her sibling, or being uprooted from her community, and the record contains statements from the applicant's spouse's family attesting to their relationship and the closeness of the family. Again, however, the statements of the applicant's spouse are insufficient to establish that the impact on her of separating from family and community would rise above that normally experienced by the relatives of aliens who have been excluded and choose to relocate with their spouses. *Matter of Soffici, supra*. While the AAO acknowledges the applicant's ties to family and community, the record does not demonstrate the extent to which the loss of these ties would affect her.

Counsel contends that the applicant has established a successful career as a hairdresser in the entertainment industry in Los Angeles, and would not be able to find commensurate employment in England. The record contains pay stubs, tax returns and employment letters establishing the applicant's spouse has a successful career as a hairdresser in the entertainment industry in Los Angeles. The applicant's spouse also states that it would constitute an extreme hardship on her to give up her career in order to relocate to England with the applicant because she would not be able to find commensurate employment. However, the record again contains no documentary evidence, e.g., published reports on employment within the British entertainment industry, that demonstrates that the applicant's spouse would be unable to obtain employment in the British entertainment industry or elsewhere in the British economy.

Based on the above, the AAO does not find the record to establish that the applicant's spouse would suffer extreme hardship if she were to relocate to England with the applicant.

As previously discussed, the applicant's claim to extreme hardship must also be established if his spouse remains in the United States. On appeal counsel asserts that the applicant enabled the applicant's spouse to overcome the depression from which she suffered prior to their meeting. Counsel also contends that USCIS disregarded evidence of the applicant's spouse's pregnancy,

The applicant's spouse asserts that she would suffer extreme hardship if her husband is excluded from the United States. She recounts the story of how she and the applicant met, how the applicant assisted her emotionally after her father passed away and her mother's health began declining, and how they endured the stress this imposed on their relationship. She states that being separated from the applicant would cause her an extreme and unbearable amount of pain, that before she met the applicant she had been diagnosed with depression and prescribed Prozac. She states that seven years ago she was seeing a psychiatrist in Atlanta and also spent a year in therapy with a psychologist. After marrying the applicant, the applicant's spouse contends she was able to stop taking her medication. She fears that if the applicant were excluded her thoughts of depression and suicide would return, and that she would not be able to physically or emotionally endure the hardship. The

applicant's spouse further states that the emotional and physical stress of being separated from her husband could be fatal to her.

While the record contains documentation that supports the applicant's spouse's claim to have been treated with medication for depression, it does not provide sufficient evidence to establish that she was previously diagnosed with clinical depression, treated by a psychiatrist and psychologist or had thoughts of suicide. Neither does the record contain a current evaluation of the applicant's spouse by a licensed psychologist or other mental health professional that establishes how the removal of the applicant from the United States would affect her emotional or mental status. Without such, the record does not prove that the emotional hardship suffered by the applicant's spouse upon separation from the applicant would rise beyond that normally experienced by the spouses of excluded aliens.

The AAO acknowledges the applicant's concerns about maintaining his family and the hardship the applicant's spouse will endure if separated from him. However, it does not find the record to contain evidence that distinguishes the hardship that would be experienced by the applicant's spouse from that of other spouses separated as a result of removal. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See, e.g. Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991)(upholding the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission); *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996)(holding that the common results of deportation are insufficient to prove extreme hardship and defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation). Having carefully considered the hardship factors, both individually and in the aggregate, the AAO concludes that the record in this case does not establish extreme hardship to the applicant's spouse if the applicant's waiver application is denied and she remains in the United States.

The applicant is also the father of a U.S. citizen child, born on June 20, 2004. On appeal, counsel contends that the applicant's child would suffer hardship regardless of whether he relocated with his father to England or remained in the United States. Hardship, counsel asserts, would take the form of separation from his family in the United States if his mother relocates to England or his father if she remains in the United States. Counsel also asserts that, as the United States has one of the highest standards of living in the world, the loss of this standard of living and potential opportunities in the United States is a prospective hardship for the applicant's child and should be taken into consideration when determining extreme hardship. The record, however, contains no documentary evidence that demonstrates that the hardship suffered by the applicant's child as a result of the applicant's inadmissibility would be greater or different than that experienced by the children of other individuals found to be inadmissible to the United States. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The 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). Accordingly, the record does not establish that the applicant's child would experience extreme hardship if the applicant's waiver application is denied.

As the record does not establish that a qualifying relative would suffer extreme hardship as a result of a denial of the applicant's waiver application, the AAO finds that it also fails to demonstrate that a qualifying relative would suffer the heightened standard of exceptional or unusual hardship. Having found the applicant 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(a)(2)(A) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.