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FILE: [REDACTED] Office: LOS ANGELES, CA Date:

SEP 21 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. § 1182(h)

ON BEHALF OF PETITIONER:



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, 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. He was found to be inadmissible to the United States under 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 a crime involving moral turpitude (possession or receipt of stolen property). The applicant is the son of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. He 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 with his father and other family members.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of District Director* dated May 31, 2007.

On appeal, counsel for the applicant states that former counsel failed to submit sufficient documentation of hardship to a qualifying relative and asserts that the applicant's father would suffer psychological and financial hardship if the applicant were forced to depart the United States. *See Counsel's Brief in Support of Appeal* dated July 16, 2007. In addition to letters from the applicant, his father, and other relatives submitted with the waiver application, counsel submitted in support of the appeal a psychological evaluation of the applicant's father. 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:

(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 Board of Immigration Appeals ("BIA") stated in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 61 7-1 8 (BIA 1992):

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general. . . .

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required *mens rea* may not be determined from the statute, moral turpitude does not inhere. (Citations omitted.)

The record indicates that on February 2, 2006 the applicant was convicted of two counts of receiving stolen property in violation of section 496(a) of the California Penal Code, which provides, in pertinent part:

- a) Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a state prison, or in a county jail for not more than one year. . . .

The BIA found that possession of property with knowledge it was obtained through a crime constitutes a crime involving moral turpitude where knowledge that the property was obtained through commission of a crime was an element of the offense. See *Matter of Salvail*, 17 I&N Dec. 19, 20 (BIA 1979). Since the applicant's convictions were for conduct that occurred less than fifteen

years ago, he does not qualify for a waiver under section 212(h)(1)(A) of the Act, but may seek a waiver under section 212(h)(1)(B) of the Act.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the 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. In *Hassan v. INS*, *supra*, the court further held 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. 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.

The record reflects that the applicant is a twenty-three year-old native and citizen of Mexico who has resided in the United States since June 1994, when he entered without inspection. The record further reflects that the applicant's father is a fifty-five year-old native of Mexico and citizen of the United States. They both reside in Canyon Country, California.

Counsel states that the applicant's father is suffering from a psychological condition and the forced departure of the applicant will cause him psychological and emotional hardship. See *Brief in Support of Appeal* at 2. In support of this assertion counsel submitted a psychological evaluation conducted by [REDACTED]. In the evaluation [REDACTED] states that the applicant's father "reports being distraught about the prospect of his son being deported from the United States" and reports having a close relationship and close financial ties with the applicant. See *Report of* [REDACTED] dated July 11, 2007, at 2. The report further states that the applicant's father has experienced difficulty sleeping, a loss of appetite, and feelings of "significant stress." See *Report of* [REDACTED] at 2. Mr. [REDACTED] concludes that he meets the criteria for an Adjustment Disorder with anxiety and states,

Here [REDACTED] deportation will sever a crucial source of meaningful social relations, which has a significant and positive impact on [REDACTED] psychological well-being. This loss of consistent and meaningful contact with his son will make it significantly more likely that he will suffer from major depressive disorders and declining health with age. *Report of [REDACTED] at 4.*

The input of any mental health professional is respected and valuable in assessing a claim of emotional hardship. However, the AAO notes that although the submitted report is based on a psychological evaluation of the applicant's father, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's father or any history of treatment for his depression or anxiety. The conclusions reached in the submitted evaluation, being based on one interview that was conducted telephonically, do not reflect the insight that would result from an established relationship with the counselor, thereby rendering the counselor's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Further, there is no indication on the record that [REDACTED] or any other mental health professional provided any follow-up treatment, despite the diagnosis of adjustment disorder with anxiety.

The evidence on the record is insufficient to establish that separation from the applicant would cause his father to experience emotional harm that is more serious than the type of hardship a family member would normally suffer when faced with the prospect of his son's deportation or exclusion. Although his distress over the applicant's immigration situation is neither doubted nor minimized, a waiver of inadmissibility is available only where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation 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. Any emotional hardship the applicant's father would experience appears to be the type of hardship normally to be expected when a family member is excluded or deported.

Counsel states that the applicant's father would suffer financial hardship if the applicant were removed, and the psychological evaluation submitted with the appeal indicates that his father fears he would have to sell his home and business in order to support the applicant if he were denied admission and returned to Mexico. *Report of [REDACTED] at 2.* The psychological evaluation further states that the applicant helps his father run his business and that his father recently purchased an investment property with the applicant, whose ongoing financial contribution is needed to avoid losses of about \$300 per month. *Report of [REDACTED] at 3.* No evidence was submitted to document the applicant's father's living expenses or provide evidence concerning the investment property mentioned in the psychological evaluation. 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)). Further, there is no indication that there are any unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of the applicant's removal. Having to operate his business without

the applicant's assistance and provide the applicant with financial support in Mexico therefore appear to be common results of exclusion or deportation and would not rise to the level of extreme hardship for the applicant's father. *See INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The emotional and financial difficulties that the applicant's father would experience appear to be the type of hardships that family members would normally suffer as a result of deportation 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). The applicant made no claim that his father would experience hardship if he were to relocate with him to Mexico. Therefore, the AAO cannot make a determination of whether the applicant's father would suffer extreme hardship if he moved to Mexico.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen father as required under section 212(h) of the Act.

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. 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.