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U.S. Citizenship
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Services

[REDACTED]

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FILE:

[REDACTED]

Office: CHICAGO

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 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 or reopen, 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, Chicago, Illinois, 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 who 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 committed crimes involving moral turpitude. 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 with his U.S. citizen daughter and spouse and his U.S. lawful permanent resident parents.

The District Director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly.

On appeal, counsel asserts that the director made errors of law and fact in his decision. As corroborating evidence, the record contains employment verification letters for the applicant and his spouse, a letter from the applicant's father's physician, a letter from the applicant's spouse's physician, a letter from the applicant's spouse's psychologist, numerous letters from the applicant's friends, letters from the applicant's church, and attestations from the applicant, his spouse and his parents. 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 parts:

- (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.

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[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 director found the applicant inadmissible for having been convicted of two crimes involving moral turpitude. The applicant has not disputed this determination on appeal.

The record reflects on August 17, 2000, the applicant was convicted in the Circuit Court of Cook County, Illinois, of felony burglary in violation of section 19-1 of the Illinois Criminal Code (720 ILCS 5/19-1) and sentenced to 30 months probation [REDACTED]. The record further reflects that on January 19, 2006, the applicant was convicted in the Illinois Circuit Court of the Eighteenth Judicial District of misdemeanor battery in violation of section 12-3 of the Illinois Criminal Code (720 ILCS 5/12-3) and sentenced to a period of conditional discharge for one year (case number illegible).

The AAO has reviewed the statutes, case law and other documents related to these convictions, as well as the relevant precedent decisions from the Board of Immigration Appeals and the courts. The AAO concurs with the director that the applicant has been convicted of two crimes involving moral turpitude and is therefore inadmissible under section 212(a)(2)(A)(i) of the Act.

Section 212(h) of the Act provides, in pertinent part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . if –

. . . .

(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 [Secretary] 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 section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the relatives that qualify are the applicant's U.S. citizen spouse and daughter and his U.S. lawful permanent resident mother and father. Hardship to the applicant himself is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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 in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, “the most important single hardship factor may be the separation of the alien from family living in the United States”, and that, “[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.” (Citations omitted). Although the present case did not arise in the Ninth Circuit, separation of family will be given appropriate weight in the assessment of hardship factors.

The AAO notes further, however, that 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, 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 *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court 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.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she 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.

On appeal, counsel asserts that the applicant’s father is in poor health. Counsel states that the applicant is assisting his parents and they need him in the United States. Counsel states that the applicant’s parents will suffer greatly if he is not in the country. The record contains a letter from the applicant’s parents, dated January 2, 2008. The applicant’s parents state in the letter that the applicant helps with their mortgage payment and helps maintain their house. The applicant’s father states that he does not have a permanent job and earns \$8.75 per hour when he works. He states that he has been hospitalized several times in the last five years. He states that when he was hospitalized in August 2007 he was out of work for one month and the applicant paid his mortgage and other utilities. He states that he has high blood pressure and heart problems, takes daily medication, and depends on the applicant economically. As supporting evidence, the applicant furnished a letter from [REDACTED], which states that the applicant’s father has hypertension, osteoarthritis of the knees, metabolic syndrome, morbid obesity, and sciatica.

The AAO will consider financial hardship as a factor contributing to extreme hardship. However, in the present case, the applicant’s parent’s financial hardship is not demonstrated by the record. The record does not contain any documentation of the applicant’s father’s expenses and income. Nor does it contain any recent documentation of the applicant’s income as evidence that he has the means to financially support his parents. The record contains tax returns the applicant filed with his

Application to Adjust Status (Form I-485), which show that in 2004 he and his spouse had a joint income of \$7,718, in 2003 he had an income of \$9,869, and in 2002 he had an income of 6,458. The U.S. Department of Health and Human Service's 2004 federal poverty guidelines reflect that an annual income of less than \$9,310 for a family of one constitutes poverty, thus allowing for financial eligibility for certain federal program purposes.¹ The applicant's tax returns indicate that his average income is at or below the federal poverty level. The record contains an employment verification letter, dated February 7, 2008, from the human resources manager at Vertis Communications, which states that the applicant has been employed with the company since November 2, 2007 as a Senior Material Handler. However, the letter fails to provide any information on the applicant's income. Further, the record does not contain any documentation related to the applicant's father's hospitalizations. Nor does it contain an attestation from a physician regarding how his medical conditions affect his activities of daily life and the assistance he needs. 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)). Although the applicant's father's unsupported assertions are relevant and have been considered, they can be afforded little weight in the absence of supporting evidence.

Counsel asserts that the applicant's daughter has a very close emotional bond with the applicant and loves him very much. Counsel states that the applicant's wife is pregnant with the applicant's child.² Counsel states that both the applicant's wife and daughter rely on the applicant for their survival. Counsel notes that the applicant's wife and daughter are native born U.S. citizens and their family ties are in the United States. The record contains an undated letter from the applicant's spouse, which states that the stress of her husband's removal to Mexico is starting to take great emotional, physical and mental toll on her. She states that she has not slept and it is taking a toll on her performance at work. She states that she is afraid of the effect it could have on her daughter. She states that the thought of being alone has her feeling depressed, alone and frightened. She states that she does not know how she will pay for rent, bills, school, transportation and items for her daughter.

As corroborating evidence, the applicant furnished a letter, dated February 7, 2008, from his spouse's pre-natal care physician, [REDACTED]. Dr. [REDACTED] states that the applicant's spouse is going through a lot of stress and depression due to the fact that the applicant is in the process of being deported to Mexico. She states that all of the problems are affecting the applicant's spouse as well as her fetus. The applicant also furnished a letter, dated February 5, 2008, from [REDACTED], Clinical Psychologist, Gersten Center for Behavioral Health. Dr. [REDACTED] states in her letter that she met with the applicant's spouse for an hour-long clinical assessment. She states that the intensity of anxiety and fear the applicant's spouse is presently experiencing is a danger for both herself and the child she is carrying. She states that the applicant's spouse is not sleeping well, unable to eat much, and her mind is constantly preoccupied with fears and worries. She states that the emotional suffering the applicant's spouse is enduring is extreme, and has a deleterious effect on her physical and emotional health, and is affecting the health of the child she is carrying.

¹ <http://aspe.hhs.gov/poverty/04poverty.shtml>

² Counsel's brief is dated March 4, 2008.

The AAO has reviewed [REDACTED] and [REDACTED] letters and finds they fail to establish that the applicant's spouse is suffering from hardship that is beyond the typical hardship of individuals separated as a result of removal or inadmissibility. First, the AAO finds that the affect of the applicant's stress on the health of her baby, who was then in utero, was not documented with any medical reports or records. Therefore, the collective assertions of harm to the applicant's baby were based on speculation alone. Second, the AAO finds that the input of any mental health professional is respected and valuable; however the submitted letter from [REDACTED] is based on a single one hour long interview with the applicant's spouse. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse. The AAO observes that Dr. [REDACTED] half page letter states that the applicant's spouse has symptoms of anxiety and fear, but fails to present a full evaluation and diagnosis of her mental health. As such, the conclusions reached in the letter, based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative.

In regard to the applicant's spouse's assertion that she will suffer financial hardship if she is separated from her husband, the record does not demonstrate her spouse's earnings as evidence of his ability to support his wife and children. As previously stated, the record does not contain recent documentation of the applicant's income. The applicant's tax returns in the record reflect that in 2004 he and his spouse had a joint income of \$7,718, in 2003 he had an income of \$9,869, and in 2002 he had an income of 6,458. According to the U.S. Department of Health and Human Service's 2004 federal poverty guidelines, the applicant's tax returns indicate that his average income is at or below the federal poverty level for a family of one. The applicant's current ability to financially support a family of four based on his previous earnings is unclear from the record. As previously noted, the applicant's employment verification letter from the human resources manager at Vertis Communications fails to provide any information on the applicant's income. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. While the assertions of financial hardship are relevant and have been considered, they can be afforded little weight in the absence of supporting evidence.

The AAO recognizes that the applicant's qualifying family members will suffer emotionally as a result of their separation from the applicant. Their situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, 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. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *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); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

Finally, extreme hardship to the applicant's qualifying family members must also be established in the event that they accompany the applicant to Mexico. On appeal, counsel asserts that as a result of increased enforcement, and more deportations, there is a growing anti-U.S. sentiment among the population in Mexico. Counsel states that the applicant's wife and daughter will be subject to that bias and will suffer. Counsel states the applicant's father will not be able to receive proper medical care in Mexico. Counsel states that the applicant's father will suffer from being separated from his son, and deprived of his son's economic and emotional support.

The AAO has considered counsel's assertions and finds that he has failed to support them with any corroborating evidence. Counsel has not submitted any country condition reports or newspaper articles on anti-U.S. sentiment throughout Mexico and the targeting of U.S. citizens. The AAO observes that the applicant's spouse's birth certificate reflects that her parents are from Mexico, indicating that she is likely familiar with the Mexican culture, and may have family members residing in the country. Furthermore, there is nothing in the record to demonstrate that the applicant's parents would not receive proper medical care in Mexico. The record does not contain country condition reports on the status of health care in Mexico. Nor does it contain a letter from the applicant's spouse's physician detailing his medical treatment in the United States. The AAO notes that the record contains a copy of the applicant's father's permanent resident card, which reflects that he has been a U.S. lawful permanent residence since January 27, 2005. It is unclear from the record whether the applicant's father was residing in Mexico prior to this date, and, if so, the type of medical treatment he received in Mexico. Finally, the record contains no documentation related to the applicant's financial means and ability to support his parents. 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 Obaighena*, 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).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's qualifying relatives, 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 eligibility for a waiver of inadmissibility 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 establishing that the application merits approval 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.