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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

H2

FILE:

Office: PORTLAND, OR

Date: SEP 25 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. section 1182(h), and Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

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 Acting Field Office Director, Portland, Oregon. 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I) for having been convicted of Crimes Involving Moral Turpitude (CIMT), and section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), for having willfully misrepresented material facts in order to receive an immigration benefit. The applicant is married to a lawful permanent resident (LPR) and has four U.S. citizen children. The applicant seeks a waiver of inadmissibility pursuant to sections 212(h) and 212(i) of the Act, 8 U.S.C. § 1182(h) and § 1182(i), in order to remain in the United States.

The Acting Field Office 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 May 30, 2007.

On appeal, counsel for the applicant asserts that the denial of the applicant's waiver application is manifestly unreasonable, unjust, inhumane and contrary to applicable law.

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

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

(i) **In general.** Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other

documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.

Section 212(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as set forth in section 212(i):

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien

The record reflects that the applicant was convicted of theft under chapter 9A.56 of the Revised Code of Washington (RCW) on October 1, 1999, in the Benton County District Court, Washington. The record reflects that the applicant was also convicted of theft under chapter 9A.56 of the RCW, on August 31, 2001, in the Benton County District Court, Washington. The Acting Field Office Director concluded that the applicant had been convicted of Crimes Involving Moral Turpitude (CIMT), and was inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I). Theft has long been held to constitute a CIMT. *Matter of Garcia*, 11 I. & N. Dec. 521 (BIA 1966). As such, the applicant has been convicted of two CIMTs. The applicant does not contest this finding.

The record reflects that the applicant submitted a Form I-539, Application to Extend/Change Nonimmigrant Status, on August 20, 2002. On that form, which she signed, she asserted that she had only been convicted of one crime. As a result of that representation, the application was approved and she was granted temporary V-visa status. The AAO notes that the Acting Field Office Director also indicated that the applicant had reiterated this misrepresentation at an adjustment interview before United States Citizenship and Immigration Services (USCIS) on April 27, 2006. Therefore the applicant is also inadmissible pursuant to section 212(a)(6)(C) of the Act. The applicant does not contest this finding.

A section 212(i) waiver of the bar to admission resulting from section 212(6)(C)(i) of the Act is dependant upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse and/or parent of the applicant. A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse, parent or child of the applicant. Hardship the applicant would experience due to inadmissibility is not relevant to a determination of extreme hardship in section 212(h) and section 212(i) waiver proceedings unless this hardship would result in hardship to a qualifying relative. The AAO notes that the applicant's children are qualifying relatives only for the purposes of section 212(h) waiver proceedings and that, in 212(i) waiver proceedings, hardship to them must result in hardship to the qualifying relative for it to be considered. The AAO will therefore analyze the hardship in this case under the more restrictive requirements of section 212(i) of the Act as the applicant's eligibility for a waiver under section 212(i) will also meet the requirements of section 212(h). Should extreme hardship be established, it

is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

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).

This matter arises within the jurisdiction of the Ninth Circuit Court of Appeals. That court has 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). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (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). However, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

The AAO notes that any evaluation of extreme hardship to a qualifying relative should discuss the impacts on that qualifying relative 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 includes, but is not limited to, a brief from counsel; a joint statement from the applicant and her spouse; birth certificates for the applicant and her four children; a marriage certificate for the applicant and her spouse; tax documentation for the applicant and her spouse; and court records pertaining to the applicant’s convictions.

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

On appeal, counsel for the applicant asserts that the fact that the applicant has been in the United States for 19 years, and has four children, is sufficient to establish extreme hardship to the applicant's LPR spouse and children. He also asserts that the Acting Field Office Director incorrectly disregarded the cumulative impact of the hardships on the applicant's LPR spouse and children, including the financial and separation impacts that will arise based on her removal. An examination of the record does not support counsel's assertions. There is no documentation in the record that demonstrates that any financial or emotional hardship experienced by the applicant's spouse will rise above that normally experienced by the relatives of excluded aliens. 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).

In their joint statement, the applicant and her spouse assert they will suffer emotional and financial hardship as the applicant's spouse and her children depend on her for income and daily parental guidance. The record contains no documentary evidence of significant debt, no articulation of monthly financial obligations, and no evidence that the applicant's spouse would not be able to adequately support the applicant's children in the event of the applicant's removal. The record also lacks any documentary evidence, such as country conditions reports or materials, that indicates that the applicant would be unable to obtain employment in Mexico and provide financial assistance to her family from outside the United States. Finally, the record fails to provide any documentary evidence, e.g., an evaluation by a licensed mental health professional, that the emotional suffering of the applicant's spouse as a result of separation will rise above that normally experienced by the relatives of excluded aliens. *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996). 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)). Accordingly, the hardship claims raised by the record, when considered in the aggregate, fail to establish that the applicant's spouse would experience extreme hardship if the applicant is denied admission and he remains in the United States.

As noted above, a determination of extreme hardship should include a consideration of the impacts of relocation on the applicant's qualifying relative. The record does not address what impacts relocation would have on the applicant's spouse if he were to relocate with the applicant. As such, the record does not indicate that the applicant's spouse would suffer extreme hardship if he were to move to Mexico with the applicant.

While the AAO acknowledges that the applicant's husband would experience hardship as a result of the applicant's inadmissibility, 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 that the record does not distinguish the hardship that would be suffered by the

applicant's husband from the hardship normally experienced by others whose family members have been excluded from the United States, the applicant has failed to establish extreme hardship to a qualifying relative under section 212(i) 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(i) 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.