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



U.S. Citizenship  
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FILE:

Office: LOS ANGELES, CALIFORNIA

Date: **MAR 10 2010**

IN RE:

Applicant:

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:

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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED], is a native and citizen of Mexico who was found to be inadmissible to the United States. Although the director did not indicate in his decision the specific ground of inadmissibility, he stated that the applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The section 212(h) waiver relates to inadmissibility 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 committing a crime involving moral turpitude. The director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director, dated August 3, 2007.*

On appeal, counsel states that the director failed to consider the declaration by [REDACTED] and the other submitted documentation in his decision. Counsel states that in view of the applicant's case being within the jurisdiction of the Ninth Circuit Court of Appeals, a reasonable adjudicator would find that [REDACTED] would suffer extreme hardship if the waiver application is denied. Counsel states that the Ninth Circuit would find that separating the applicant from her husband and children will result in extreme hardship to the applicant's husband.

The AAO will first address the finding of inadmissibility. Section 212(a)(2) of the Act states:

(A)(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 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines "conviction" for immigration purposes as:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

The Minute Order shows that on October 25, 2002, the applicant pled guilty to and was convicted of petty theft under California Penal Code § 484(a). Her charge was reduced to an infraction and she

paid a fine. Petty theft under California law is a crime of moral turpitude. *See U.S. v. Esparza-Ponce*, 193 F.3d 1133 (9<sup>th</sup> Cir. 1999); *Castillo-Cruz v. Holder*, 581 F.3d 1154, 1160 (9<sup>th</sup> Cir. 2009).

The applicant's only crime of moral turpitude is the petty theft conviction. It fits the petty offense exception in section 212(a)(2)(A)(ii)(II) of the Act. The petty offense exception requires that the maximum penalty possible for the offense must not exceed imprisonment for one year, and the alien must not have been sentenced to a term of imprisonment in excess of 6 months, regardless of the extent to which the sentence was ultimately executed. The applicant was not sentenced to any imprisonment. Under California law an infraction is not punishable by imprisonment. *See California Penal Code § 19.6*. Thus, the applicant is not inadmissible under section 212(a)(2) of the Act for having been convicted of a crime involving moral turpitude as she qualifies for the petty offense exception.

The AAO notes that the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation. Section 212(a)(6)(C) of the Act provides:

- (i) 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 Act is inadmissible.

The record shows that the applicant sought to gain admission into the United States on November 15, 1996, at the San Ysidro Port of Entry by presenting a valid Resident Alien Card belonging to her sister-in-law. In view of the applicant's misrepresentation of a material fact, that of her identity and her eligibility for admission to the United States, the AAO finds her inadmissible under section 212(a)(6)(C) of the Act.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 [Secretary] 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 waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant is not a consideration under the statute, and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's naturalized citizen spouse. Once extreme hardship is established, it is but one favorable factor to be

considered in determining whether the Secretary should exercise discretion. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship a qualifying relative pursuant to section 212(i) of the Act. 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. *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

In rendering this decision, the AAO has carefully considered all of the evidence in the record including [REDACTED] declaration, income tax records, letters, photographs, invoices, certificates, rental agreements, birth certificates, naturalization certificates, Resident Alien Cards, a marriage certificate, and other documentation.

Extreme hardship to the applicant’s spouse must be established in the event that he remains in the United States without the applicant, and alternatively, if he joins the applicant to live in Mexico. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

With regard to remaining in the United States without the applicant, the applicant’s spouse states in his declaration that he will not be able to earn a sufficient living if his wife is deported. He conveys that he has been employed with [REDACTED] since April 1997. The October 6, 2006 letter by [REDACTED] confirms [REDACTED] employment. In his declaration, [REDACTED] states that his job requires that he remain available 24 hours a day, including weekends and holidays. He states that for the past 10 years he has been working 70 to 80 hours every week, and that without his wife he could not have done this. Income tax records reflect [REDACTED] income as \$99,924 in 2006. He has two sons, who were born on May 26, 2005 and February 5, 1998.

The AAO finds the record fails to establish that [REDACTED] income of \$99,924 is insufficient to cover his monthly financial expenses such as the \$534 rental fee for the space in the mobile home park. His income is sufficient to pay for childcare services while he is at work. 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).

█ states that he and his sons have a close relationship with the applicant and will experience emotional trauma if separated from her. Family separation must be considered in determining hardship. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (“the most important single hardship factor may be the separation of the alien from family living in the United States”). However, courts have found that family separation does not conclusively establish extreme hardship. In *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), the Ninth Circuit upheld the 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.” (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). In *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), states that “[e]xtreme hardship” is hardship that is “unusual or beyond that which would normally be expected” upon deportation and “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991). The AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of separation from a loved one. It has taken into consideration and carefully reviewed the evidence in the record. After careful consideration, it finds that █ has not explained or provided corroborating documentation to show how his emotional hardship, which is a heavy burden, is “unusual or beyond that which would normally be expected” from an applicant’s bar to admission to the United States. *See Hassan and Perez, supra*.

When the AAO considers the entire range of hardship factors in their totality in order to determine whether the combination of hardships is beyond those hardships ordinarily associated with removal, we find that █ claim that he will not be able to earn a sufficient living without his wife in the United States is not persuasive in that his income of \$99,924 is more than sufficient to cover his monthly financial expenses. While we acknowledge that █ will experience emotional hardship if separated from his wife, we find that he has not fully explained or presented documentation to establish how his emotional hardship will be “unusual or beyond that which would normally be expected” from an applicant’s bar to admission to the United States. When the combination of hardship factors, which factors are █ claim of financial and emotional hardship due to separation from his wife, are considered collectively, the AAO finds they fail to establish extreme hardship to █ if he remained in the United States without his wife.

█ claims that if he joins his wife in Mexico he must give up all that he has worked for in the United States. He asserts that he has lived in the United States for almost his entire life and all of his immediate family members, his mother, father, and siblings, are lawful permanent residents of the United States. He contends that he has a close relationship with his family members, spending birthdays and holidays together. He indicates that he has no immediate family members outside the United States. Submitted into the record are Resident Alien Cards of █ family members. █ expresses concern about the possibility of one of his sons having a medical complication while living in Mexico, about the cost of moving to Mexico, and about the high unemployment in Mexico and obtaining employment in a rural community.

Although [REDACTED] indicates that he will experience emotional hardship as a result of separation from his family members in the United States, and due to his concern about healthcare for his son in Mexico, the cost of moving to Mexico, and obtaining employment in a rural community, the AAO finds that he has provided no documentation establishing that one of his sons has a serious medical condition for which treatment is unavailable in Mexico. Although [REDACTED] states that the cost of moving to Mexico would be enormous, the record shows that he has \$88,000 in retirement and savings accounts, which monies would assist in relocation to Mexico. With regard to [REDACTED] concern about finding employment in Mexico, there is no corroborating documentation in the record to demonstrate that he and his wife will be unable to obtain employment. 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)). Even though we recognize that [REDACTED] will experience some emotional hardship from family separation, he has not sufficiently described how that hardship is unusual or beyond that which is normally to be expected upon separation from one's family members. *See Hassan and Perez, supra*.

When the AAO considers the entire range of hardship factors in their totality in order to determine whether the combination of hardships is beyond those hardships ordinarily associated with removal, we find that [REDACTED] claim that his son may have a medical complication while living in Mexico is not persuasive in that he has provided no medical records or other documentation showing that his son has a serious health condition. He has furnished no documentation to substantiate his contention of not being able to find employment in Mexico. His claim of not being able to afford moving to Mexico is refuted by his \$88,000 in retirement and savings accounts. We acknowledge that [REDACTED] will experience emotional hardship due to family separation and moving to a foreign country; however, he has not fully explained how that hardship is unusual or beyond that which is normally to be expected upon separation from one's family members. *See Hassan and Perez, supra*. When the combination of hardship factors, which factors are [REDACTED] claim of emotional hardship from family separation, ability to find employment, concern about his son receiving health care, and cost of moving to Mexico, are considered collectively, the AAO finds they fail to establish extreme hardship to [REDACTED] if he joined his wife to live in Mexico.

Based upon the record before the AAO, the applicant in this case fails to establish extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act, 8 U.S.C. § 1182(i).

Because the applicant is statutorily ineligible for relief, no purpose is 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 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.