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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

Date: **DEC 06 2013**

Office: HOUSTON

FILE: [REDACTED]

IN RE:

Applicant: [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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Houston, Texas. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the prior AAO decision will be affirmed.

The applicant is a citizen of Jordan who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i), for having been convicted of crimes involving moral turpitude. The applicant is married to a U.S. citizen. 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 U.S. citizen spouse and U.S. lawful permanent resident son.

In a decision dated May 7, 2012, the Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. The applicant timely appealed that decision and the appeal was dismissed by the AAO on May 29, 2013.

The applicant, through counsel, filed a motion to reopen and a motion to reconsider the AAO decision, including two new affidavits in support of his application and tax returns for the applicant and his spouse.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The applicant has provided new documentation in support of his appeal. The application will be reopened, but the appeal ultimately remains dismissed as set forth below.

The applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude, which included two theft convictions with the activities that led to the most recent conviction occurring on November 21, 2000.

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is found under section 212(h) of the Act. That section provides, in pertinent part, that:

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

The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -  
(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -

- (i) . . . the 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 [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; or

As the activities that led to the applicant's inadmissibility occurred less than 15 years ago, the applicant's eligibility for waiver of inadmissibility under section 212(h) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative. The applicant's U.S. citizen spouse and U.S. lawful permanent resident son are the qualifying relatives in these proceedings. If extreme hardship to a qualifying relative is established, USCIS then assesses whether an exercise of discretion is warranted. See *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

In our previous decision we found that the applicant established extreme hardship to his U.S. citizen spouse in the event that she would have to relocate to the applicant's native Jordan with the applicant, but not in the event that she were to be separated from the applicant. We can find extreme hardship warranting a waiver of inadmissibility, however, only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. Cf. *Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also cf. *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case. The applicant does not present evidence that his U.S. lawful permanent resident son would suffer extreme hardship as a result of his inadmissibility.

On motion, counsel states that our prior decision that the applicant's spouse would not suffer extreme hardship was erroneous. He states that "additional arguments and authority are included in the attached affidavits and documentary evidence." Two new affidavits were submitted on motion, one from the applicant's spouse and another from the applicant's U.S. lawful permanent resident son. Additionally, the applicant submitted his and his spouse's U.S. Federal Income Tax Returns for 2011 and 2012. In her affidavit, the applicant's spouse states that the emotional and financial hardship that she will suffer if she were to be separated from the applicant would be extreme. In particular, she states that the applicant is her "emotional rock" and "financial provider." She also states that although she has been employed for past few years as a caregiver, "earning in excess of \$25,000 annually," she is hopeful that she will be able to retire "in the very near future." She goes

on to state that without her husband's financial support that she would not be able to survive. The U.S. Federal Income Tax Returns submitted indicate that the applicant's spouse is the only one between her and her husband to have reported an income for either 2011 and 2012. Although the applicant's son states in his affidavit that the income generated from the business he owns should be attributed to his father, no documentation was submitted to support that assertion. Moreover, the applicant's son stated that his father had financial difficulties with the business in 2011 and 2012, but he predicted that his father's income in 2013 "will exceed \$30,000." Again, there is no documentary evidence in the record to support that assertion. Pursuant to section 291 of the Act, 8 U.S.C. § 1361, the burden of proof is on the applicant to establish that he is not inadmissible or, if inadmissible, that he is eligible for a waiver of that inadmissibility and should be granted the waiver as a matter of discretion. Although the applicant's son and spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)). Not only does the record fail to establish that the applicant's spouse is financially dependent on him and "would not be able to survive" without his financial support, the record fails to establish that the applicant has any income.

Moreover, the applicant's spouse states that she would suffer emotional devastation if she were to be separated from her husband of 16 years during the twilight of her life. The record establishes that the applicant's spouse is 65 years old and the applicant is 69 years old. She states that her husband is her emotional rock and that she would also worry about his physical and emotional health were he to be separated from his medical provider and his children. No new documentation was submitted in support of these statements on motion. Previously the AAO acknowledged that the applicant's spouse would suffer hardship if she were to be separated from her husband; however, we found that the evidence did not demonstrate more than the common hardship associated with inadmissibility or removal. No evidence has been submitted on motion that would change our determination. As noted above, 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. at 165. The AAO recognizes the impact of separation on families, but the evidence in the record, when considered in the aggregate, does not indicate that the hardship in this case as a result of the applicant's spouse's separation from the applicant is extreme. *Matter of O-J-O-*, 21 I&N Dec. at 383.

Based on the foregoing, the AAO finds that the evidence in the record, when considered in the aggregate, fails to establish that the applicant's qualifying relative would experience hardship that rises beyond the common results of removal or inadmissibility. The documentation in the record therefore fails to establish the existence of extreme hardship to a qualifying relative as a result of the applicant's inadmissibility to the United States, as required under 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 application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The prior decision of the AAO is affirmed.