

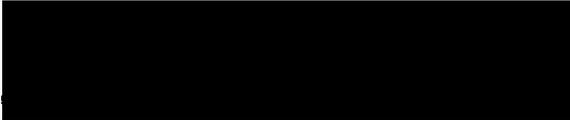
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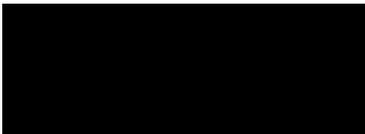
FILE: [REDACTED] Office: LOS ANGELES

Date: JUN 29 2005

IN RE: [REDACTED]

PETITION: 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, 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 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 crimes involving moral turpitude. The applicant is the wife of a United States citizen and the parent of two United States citizen children. She seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that she may reside in the United States with her family.

The district director, in originally considering the requested waiver, denied the application due to the applicant's failure to demonstrate extreme hardship to her spouse or children beyond that which would normally be associated with deportation from the United States.¹ *Decision of the District Director*, dated March 4, 2004. Counsel then filed the instant appeal.

On appeal, counsel contends that the district director erred in denying the waiver application and submits additional evidence on appeal, including psychological evaluations of her husband and oldest child offered to show that they are suffering from depression and anxiety. The AAO notes that the record contains several documents submitted in support of the application, including the additional documents offered in support of the appeal. The entire record was considered in rendering a decision on the current appeal.

The record reflects that the applicant is a thirty-six-year-old native and citizen of Mexico. She claims to have last entered the United States without inspection on or about July 1, 1993. While living in the United States the applicant was convicted of two theft offenses that occurred in 1997 and 2000.² It is on the basis of these offenses that the applicant seeks a waiver of inadmissibility.

The applicant married her spouse, [REDACTED] on July 26, 2000. The couple has two children born in the United States, a son, [REDACTED] born October 17, 1995, and a daughter, [REDACTED] born on January 8, 1998. The record reflects that the applicant's brother, a U.S. citizen, initially filed a Petition for Alien Relative (Form I-130) on the applicant's behalf on November 19, 1996, which was approved on January 21, 1997. It appears that the applicant's spouse thereafter became a United States citizen on July 19, 2000, and he then filed an I-130 on her wife's behalf on October 13, 2000, which was approved on July 31, 2001. The applicant simultaneously filed an Application for Adjustment of Status (Form I-485). Additional processing of the I-485 occurred, and the applicant filed the Form I-601 waiver application on September 29, 2003. The application was ultimately denied on March 4, 2004, for the reasons previously stated.

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-

¹ The AAO notes that the district director's decision made reference to only one United States citizen child. The record reflects that the applicant has two children. It does not appear, however, that the district director's error played a role in her decision in the case.

² The AAO notes that the psychological evaluation erroneously states that the applicant's arrests occurred in 1990 and 1996. It is assumed that the dates are in error and do not reflect additional shoplifting offenses committed by the applicant.

- (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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) . . . 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 applicant was convicted of the crimes previously specified. Counsel does not contest the fact that the applicant has been convicted of crimes involving moral turpitude and requires a waiver of inadmissibility in order to pursue adjustment of status.

Upon review of the record, the AAO finds that the district director considered the applicant's eligibility for a waiver under section 212(h) of the Act concluding that the application would be denied due to the applicant's failure to demonstrate extreme hardship to any qualifying family members. The AAO will review the evidence submitted to the district director but also notes that counsel has submitted additional evidence on appeal with respect to hardship to the applicant's husband and son. The AAO will also consider the additional evidence submitted on appeal.

A waiver of the bar to admission to the United States is dependent upon the alien's showing that the bar imposes an extreme hardship on a qualifying family member. Congress provided this waiver but limited its application. By this limitation, it is evident that Congress did not intend that a waiver be granted merely due to the fact that a qualifying relationship exists. The key term in the provision is "extreme." Therefore, only in cases of great actual or prospective injury to the United States citizen or permanent resident will the bar be removed. Common results of the bar, such as separation, financial difficulties, and such, in themselves are insufficient to warrant approval of an application unless combined with more extreme impacts. *See Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien had established extreme hardship. The 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. In *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994), the BIA held that "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

The primary evidence in the record supporting the applicant's request for a waiver consists of: 1) the statements submitted by the applicant and her husband addressing the hardship that the husband and children would experience if the applicant's waiver application were denied; 2) a letter dated September 17, 2003, from [REDACTED] Principal of Diamond Elementary School, where the applicant's children are enrolled, confirming the applicant's participation in the school's Even Start Family Literacy Project; 3) a letter dated September 18, 2003, from [REDACTED] the teacher of the applicant's son, in which she describes the applicant as an exceptional parent who is very involved in her child's education by volunteering in the classroom and providing other assistance; 4) a letter dated September 19, 2003, from [REDACTED] identified as an elementary school librarian, which describes the applicant as a very kind and loving person who is very involved in the lives of her children and is a positive role model in their lives; 5) a letter dated September 19, 2003, from [REDACTED] who states that she has known the applicant for nearly four years and knows her to be a nice, kind hearted person; 6) copies of official documents evidencing the couple's marriage and birth of their children; 7) documents evidencing the spouse's financial status and the existence of medical insurance; and 8) a copy of the U.S. Department of State's 2002 Country Condition Report for Mexico. The additional documents submitted on appeal consist of the psychological evaluation, an article discussing reasons why people shoplift, and additional reference letters including two from friends or acquaintances of the applicant, and an additional letter from the spouse's employer verifying his employment and recommending the applicant for residency.

In the brief submitted in support of the appeal, counsel asserts that the evidence offered is extensive and supports the claim of extreme hardship to the husband and children. The hardship centers on the fact that the spouse's "entire family lives in the United States" noting that he has resided in the United States for twenty-two years. *See Counsel's Appeal Brief*, filed April 1, 2004. Counsel further notes that the applicant's spouse has been employed in a steady job as a computer operator since 1998, and continues to attend classes to improve his job skills. In contrast, the applicant's spouse is unaware of what jobs, if any, are available to him in Mexico should he relocate there with his family. Counsel notes further that since he is not a resident of Mexico, the applicant's spouse would need to obtain documentation to stay in Mexico. It is further alleged that the family would suffer extreme financial hardship as [REDACTED] supports the family financially. *Counsel's Appeal Brief*, at pp. 3-4.

These claims are consistent with the assertions made in the additional documents supporting the waiver application. The statements submitted by the applicant and her spouse assert hardship due to being separated from his wife noting that she has supported the family emotionally and has been a dedicated mother and wife. The spouse asserts that without the applicant he would experience financial hardship as it would be necessary for him to support his wife in Mexico, and would, additionally incur expenses in finding a babysitter or daycare for the children. In addition, he would experience emotional grief at not knowing how his wife was doing and being unable to assist her.

The record before the district director also claimed extreme hardship to the couple's U.S. citizen children. Those claims arose principally from their difficulty in relocating to Mexico and having to attend new schools, their separation from family ties in the United States, and the financial hardship that they would encounter due to the difficulty that the applicant's spouse would have in supporting them and in diminished prospects for their future. *See Letter in Support of Waiver Application*, dated September 26, 2003.

Alternatively, the record reflects that the applicant's spouse and children would experience extreme hardship if they chose to remain in the United States due to the separation from the applicant who has been the primarily care giver for the children, and has offered love and support to her husband. The statements also assert, in relation to the applicant's criminal activities, that the applicant made mistakes during a period of depression, but has learned from those mistakes and will not repeat them. *See Declaration of Margarita Orellana*, dated September 26, 2003.

On appeal, counsel now supplements the record with additional reference letters and with psychological evaluations of the applicant's husband and son, conducted shortly after the appeal of the district director's decision. The psychological evaluation, dated March 11, 2004, contains the findings with respect to the applicant, her spouse, and the couple's eldest child, [REDACTED]. The evaluation states that it was conducted for the purpose of determining the impact that the applicant's removal would have upon the emotional and psychological well-being of the family members. It states that the applicant's spouse was very emotional when asked about the possibility of being separated from his wife. *See Psychological Evaluation*, dated March 19, 2004. The spouse's primary source of anxiety is related to his wife's return to Mexico, a poor country where she will be without work or any viable means of economic support. In addition, the spouse appears concerned about his ability to care for the couple's children in the United States. He does not wish to entrust the children to childcare providers, and is unable to care for them himself due to his need to support the family financially. *Id.* The evaluation also determined that the tests administered to the applicant's spouse resulted in findings that he was in the "severe" range of depression and anxiety. The psychologist reported that if separated from his wife, this would cause him to experience great levels of stress and anxiety and would result in the loss of his wife's support. The spouse also stated that he would be unable to accompany his wife to Mexico as he would have no legal status in Mexico, and was unfamiliar with Mexico. The report finds that the loss of his wife would result in damaging psychological effects for the family, and might result in the need for psychiatric intervention. *Id.*

On the same date, a psychological evaluation was conducted on the applicant's oldest child, [REDACTED] who was eight years of age and in the third grade at the time of the evaluation. The evaluation, similarly, noted that if the applicant were to be removed from the United States it would be psychologically damaging for him. Noting that the child depended greatly on his parents, relatives, friends and environment for security and self-worth, the evaluation noted that removal of the applicant's mother would aggravate his symptoms during a sensitive and critical state. *Id.* The evaluation further noted that [REDACTED] was experiencing problems with stuttering, which could negatively impact his academic work. The report notes that the problems began when he was in the 1st grade and had continued. According to the evaluation, if he were to depart the United States with his mother, he would be unable to receive available services to deal with the stuttering, and that locating them in Mexico could be expensive and time consuming. The evaluation states that the applicant's removal, or the relocation of the family to Mexico would result in the son's emotional decline and predicted that he might develop a generalized anxiety disorder and possibly a major depressive disorder, which could have life-long consequences. *Id.*

The evaluations are consistent with the concerns of the applicant and her spouse previously expressed in the other documents supporting the waiver application. The AAO will set forth several reasons why it does not

³ The AAO notes that the evaluation also contained an interview of the applicant, but did not provide a formal evaluation, which, in any event would not have been considered, as hardship to the applicant herself is not relevant to the waiver application.

find the information set forth in the evaluations to be especially persuasive. First, the AAO notes the timing of the evaluation. It was conducted within a week of the district director's denial of the waiver application and appears to have been the first, and only psychological consolation. While the applicant and her spouse had provided statements discussing their concerns about the applicant's possible removal from the United States, there was no previous indication that the situation warranted a psychological evaluation. Second, while the AAO has no reason to question the competence of the psychologist conducting the evaluation, it largely summarizes self-reports by the husband and wife as to the family's mental states. Third, while the evaluation diagnoses the applicant's spouse and son with depression and anxiety, it does not prescribe any particular course of treatment as being necessary for their improvement, nor does it address the issue of whether the condition even requires treatment. The most that the evaluation states as to this issue is that the applicant's spouse could develop various conditions that "may need psychiatric intervention." See *Psychological Evaluation*, at p. 14-15.

An additional issue addressed in the evaluation that relates to the hardship that the applicant's eldest son will experience as a result of alleged stuttering problem. The psychologist's report states that the parents reported that the son had been in speech therapy since the 1st grade for his stuttering problem but was no longer receiving therapy despite allegedly continuing to have significant episodes of stuttering. *Id.* at p. 4. The psychologist's report indicates that the parents stated that they had been referred for further evaluation. *Id.* However, the report also states that the son's school report show that he has been a successful student, having achieved standards in all academic areas. The evaluation does not attribute his stuttering to his mother's situation, and, whether the family unit remains together or not, there is no indication that the son's stuttering would be affected effect one way or another.

The AAO further notes that although the record contains information from school officials specifically the principal and the son's teacher, submitted six months earlier, neither of those letters raise the issue of the son having difficulties with stuttering. In addition, no other records, whether from the school system, or the child's medical provider have been submitted to substantiate the claim that the child has a stuttering condition.⁴ Even assuming that the son does experience episodes of stuttering, there has been no evidence submitted as to the availability of services in Mexico to address the condition. The fact that such services may not be as readily available does not, in the AAO's view, necessarily mean that it constitutes an extreme hardship. The AAO's belief that the child's parents do not consider the condition to be of significant concern is supported by the fact that none of the other evidence in the record from the parents makes reference to the son's condition. In addition, the psychologist's report indicates that the parents have not sought additional services for their son. In any event, the AAO finds that the evidence in the record is insufficient to find that a condition exists, let alone that the son would experience extreme hardship on account of such condition if he were to relocate with his mother to Mexico.

Aside from the psychological evaluation, the evidence in support of hardship to the applicant's husband and children consists primarily of the contention that they would experience hardship based upon their separation, and financial hardship due, in the husband's case, to the addition hardship associated with maintaining his various family members, and obtaining child care for the children. In the case of the children, the claimed

⁴ The AAO notes that the school letters originally submitted by the applicant came from officials at [REDACTED] in Santa Ana, California. The psychologist's report indicates that the applicant's son was attending [REDACTED] in Santa Ana. However, no documentation relating to the son's stuttering has been submitted from officials at either school.

hardship is based largely upon a decreased standard of living should they return to Mexico, and emotional hardship should they be separated from one of their parents.

The AAO notes that to the extent one of the principal claims of extreme hardship raised by the applicant's spouse stems from the claim that he would be left alone to care for the children without his wife's support, there is evidence in the record that the applicant and his spouse have extensive family ties in the United States, including the spouse's mother and eight siblings, and three of the applicant's siblings. *See Statement in Support of Waiver Submitted by Nelson and Margarita Orellana*, dated September 26, 2003; *See also, Psychological Evaluation*, at p. 3. Nothing in the record establishes that these extensive family ties would not be of assistance to the applicant's spouse should he choose to remain in the United States with his children.⁵

While the AAO has no reason to question any of the assertions regarding the reduced standard of living that the family would experience in Mexico, there are no unique circumstances set forth which would indicate that any hardship that the applicant's spouse or children would experience would be considered extreme. It is apparent from the letter from the spouse's employer that the applicant's spouse has valuable job skills that can be of great assistance to him should he relocate to Mexico. While he is originally from El Salvador, he speaks Spanish and has acquired enough English language skills to have a position of responsibility in the United States. The applicant has not shown that this skill will prevent him from securing lucrative employment in Mexico. While the children's transition to life in Mexico will not be without some problems, the children are young; they likewise speak Spanish, and they appear to have family in Mexico that can help them with the transition. However, as United States citizens, there is nothing that requires that the applicant's spouse and children leave the United States if the parents determine that it is in the best interests of the family that they remain in the United States.

U.S. court decisions have repeatedly held, however, 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 Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit 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.

A review of the record, when considered in its totality, reflects that the applicant has failed to show that her spouse or children would suffer extreme hardship if her waiver of inadmissibility application were denied. Having found the applicant ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for an 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. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met her burden.

⁵ The AAO notes further, that the applicant's brother, who had originally filed an I-130 on her behalf, had also submitted an Affidavit of Support (Form I-8654) on her behalf, and thus has expressed a willingness to assist the applicant.

ORDER: The appeal is dismissed.