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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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invasion of personal privacy

File:  Office: SAN FRANCISCO, CA

Date: JAN 14 2003

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)

IN BEHALF OF APPLICANT:



**INSTRUCTIONS:**

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, San Francisco, California, and is now before the Associate Commissioner for Examinations 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 a crime involving moral turpitude. The applicant is the spouse and mother of United States citizens and is the beneficiary of an approved petition for alien relative. She seeks a waiver of this permanent bar to admission as provided under section 212(h) of the Act, 8 U.S.C. 1182(h), in order to remain in the United States and reside with her spouse and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the application accordingly.

On appeal, counsel asserts that the district director's denial of the applicant's waiver request results from errors of law, misapplications of the appropriate legal standards, and the distortion and ignoring of relevant evidence.

The record reflects that the applicant was convicted of Petty Theft, in violation of PC § 484, on July 24, 1998, for which she was sentenced to thirty days in county jail and three years of court probation. On March 28, 2001, she was convicted of Petty Theft with a Prior Conviction and sentenced to forty-six days in jail and three years of court probation. The applicant was also arrested on two prior occasions, in 1996 and 1997, for Petty Theft, however, the charges were dismissed.

Section 212(a) of the Act states:

CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-  
Except as otherwise provided in this Act, aliens who are ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

\* \* \*

(2) CRIMINAL AND RELATED GROUNDS.-

(A) CONVICTION OF CERTAIN CRIMES.-

(i) IN GENERAL.- Except as provided in clause (ii), an alien convicted of, or who admits having committed, or who admits committing such 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 states:

The Attorney General may, in his discretion, waive application of subparagraphs (A)(i)(I),...if-

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General 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 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; and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7

years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

Here, fewer than 15 years have elapsed since the applicant committed her last violation. Therefore, she is ineligible for the waiver provided by section 212(h) (1) (A) of the Act.

Section 212(h) (1) (B) of the Act provides that a waiver resulting from inadmissibility under section 212(a) (2) (A) (i) (I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The key term in the provision is "extreme." Therefore, only in cases of great actual or prospective injury to the qualifying relative(s) will the bar be removed. Common results of the bar, such as separation or financial difficulties, in themselves, are insufficient to warrant approval of an application unless combined with much more extreme impacts. Matter of Ngai, 19 I&N Dec. 245 (Comm. 1984). See also Hassan v. INS, 927 F.2d 465 (9th Cir. 1991). "Extreme hardship" to an alien herself cannot be considered in determining eligibility for a section 212(h) waiver of inadmissibility. Matter of Shaughnessy, 12 I&N Dec. 810 (BIA 1968).

The record reflects that the applicant and her spouse, also a native of Mexico who naturalized as a citizen of the United States in 1999, were married in Mexico in 1995. The couple has one child, a daughter born in the United States in 2000. The applicant has been unemployed since 1999 and her spouse earns approximately \$38,000 per year as a landscape supervisor. On appeal, counsel submits a brief asserting that if the applicant were removed to Mexico, her spouse and child would suffer financial and emotional hardships whether they remain in the United States separated from her or relocate to Mexico with her.

The record contains documentation including a declaration from the applicant's spouse, a psychological evaluation of the spouse, and a report on human rights practices in Mexico. The applicant's spouse states that he came to the United States more than fifteen years ago because of poverty and violence in Mexico. He asserts that he would suffer financial hardships if the applicant were removed from the United States because he would have to maintain two households and would not be able to meet his living expenses. He asserts that he would also suffer emotional hardships because he loves the applicant, relies on her for companionship and support, and that he frets and becomes anxious when separated from her.

The spouse further asserts that if the applicant is removed, his daughter would be denied the love and care that only the applicant can provide. Alternatively, if his daughter relocates to Mexico with the applicant, she would lose the love and care of her father.

and would not have access to medical care or educational opportunities.

A report from a licensed clinical psychologist contained in the record is based on the spouse's testimony during a single evaluation session on October 5, 2001. The report indicates that the spouse described having previously had recurrent unexpected panic attacks for which he had visited hospitals, clinics and/or medical doctors on several occasions. The psychologist notes that it is his opinion that the spouse would not be able to psychologically handle not having the applicant and his daughter with him in the United States and that he may relapse and suffer from a panic disorder if separated from them. There is no evidence contained in the record to support the applicant's assertion of having previously experienced panic attacks or of having sought treatment for them. There is also no evidence that he is currently under a physician's care for a significant medical condition for which treatment and/or medication is unavailable in Mexico.

In Perez v. INS, 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation.

The 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.

It is also noted that there are no laws that require the applicant's spouse and child to leave the United States and live abroad. Further, the common results of deportation are insufficient to prove extreme hardship. See Hassan v. INS, 927 F.2d 465 (9th Cir. 1991). The uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. See Shooshtary v. INS, 39 F.3d 1049 (9th Cir. 1994). In Silverman v. Rogers, 437 F.2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States."

A review of the documentation in the record fails to establish the existence of hardship to the applicant's spouse or child caused by separation that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to remain in the United States. It is concluded that the applicant has not established the qualifying degree of hardship in this matter.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Attorney General and pursuant to such terms,

conditions, and procedures as he may by regulations prescribe. Since the applicant has failed to establish the existence of extreme hardship, no purpose would be served in discussing a favorable exercise of discretion at this time.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. Matter of Ngai, supra. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.