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Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

File: [Redacted] Office: SAN FRANCISCO, CA

Date: JAN 31 2003

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)

IN BEHALF OF APPLICANT:
[Redacted]

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
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 of a naturalized United States citizen and is the beneficiary of an approved petition for alien relative. He 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 adjust his status to that of a lawful permanent resident.

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

On appeal, counsel asserts that the applicant failed to submit evidence that his spouse would suffer extreme hardship when initially filing his waiver request because prior counsel failed to properly advise the couple of the need to do so. In support of the appeal, counsel submits a brief and documentation including hardship declarations from the applicant, his spouse, and daughter; a statement concerning the couple's monthly expenses; a physician's letter concerning the applicant's spouse; and information concerning the cost of in-vitro treatment in Mexico. Counsel asserts that the documentation provided establishes that the applicant suffered a great prejudice due to the incompetence of prior counsel; that his due rights were denied because he was not advised of how crucial it was to submit evidence in support of his waiver application; that the denial of his waiver application was so fundamentally unfair that he was prevented from completely presenting his case; and that the his prior counsel's lack of communication, preparation, and knowledge egregiously prejudiced his case.

The record reflects that the applicant was convicted on October 17, 1995 of one count of unlawfully, willfully and fraudulently using a false name in an application for a California driver's license, and one count of manufacture, produce, sell, offer or transfer to another, a document purporting to be a certificate of birth. He was sentenced to three years of probation and twenty days in county jail.

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 for 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 fifteen years have elapsed since the applicant was convicted of a crime involving moral turpitude. Therefore, he 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 of the bar to admission 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). "Extreme hardship" to an alien himself 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 his spouse, also a native of Mexico who naturalized as a citizen of the United States in February 1999, were married in June 1998. It is the first marriage for the applicant and his spouse's third marriage. The spouse has a daughter from her first marriage who lives with the couple.

The applicant's spouse asserts that she earns \$2,122.00 per month and is studying to become a licensed broker, and that the applicant earns approximately \$5,000.00 per month and is the primary financial supporter for the family. She states that she and the

applicant have bought a home and that the couple's total monthly bills exceed her individual earnings. It is noted that financial documentation contained in the record of proceeding does not confirm the spouse's assertions regarding the family's income. Income tax records for tax year 2000 contained in the record reflect that the applicant's spouse earned \$19,575.64 working at JOPH, Inc and \$5,289.14 working at Sunrock Insurance Services. She filed a married, joint income tax return indicating that her and her spouse's total income for the year was \$45,527.00. No evidence of the spouse's approximately \$20,000 income for tax year 2000, or his current income, is contained in the record.

The applicant's spouse also asserts that she is infertile because of physician malpractice and that the applicant's salary has given her the opportunity to receive medical treatment for her infertility. Since her health insurance does not cover infertility treatment, she is pursuing treatment in Mexico where it is more affordable. Documentation submitted by counsel on appeal reflects that the applicant underwent a hysterosalpingogram in the United States in May 1999 and was found to have a partially filled, abnormal appearing right fallopian tube reported as secondary to scarring from previous pelvic inflammatory disease. In May 2000, she also had a cervical smear in the United States which indicated benign cellular changes associated with inflammation. The documentation submitted includes evidence that the applicant paid 17,320.12 Mexican pesos (approximately \$1,775.00) for medical treatment in Mexico in April 2002.

While the spouse's infertility is unfortunate, there is no evidence contained in the record to establish that she has a significant condition of health for which treatment is unavailable in Mexico. In fact, she is currently pursuing medical treatment in Mexico for her infertility.

The applicant's spouse further asserts that if she and her daughter move to Mexico with the applicant, she will not be able to finish her schooling and her dreams of becoming a licensed broker will be shattered. In addition, her daughter's schooling would be expensive, she would have to leave her friends and family in the United States, and she may be placed in a lower grade level in Mexico because she will have to learn to speak, write, and read Spanish well enough for her grade level.

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. Further, the common results of deportation are insufficient to prove extreme hardship. See Hassan v. INS, 927 F.2d 465 (9th Cir. 1991).

There are no laws that require the applicant's spouse and her child to leave the United States and relocate to Mexico. 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."

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.

A review of the documentation in the record, when considered in its totality, fails to establish the existence of hardship over and above the normal social and financial disruptions involved in the removal of a family member 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.