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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES DISTRICT OFFICE

Date: **AUG 16 2006**

IN RE:

[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:

[REDACTED]

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.

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 pursuant to 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 two crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to adjust his status to permanent resident and remain in the United States with his U.S. citizen spouse and four U.S. citizen children.

The district 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 Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated May 12, 2004.

On appeal, counsel contends that the applicant's U.S. citizen spouse and children will suffer extreme hardship if the applicant is compelled to leave the United States. *Brief in Support of Appeal*. Counsel asserts that the director failed to adequately review the applicant's evidence submitted in support of the application, and that the director placed undue emphasis on the fact that the applicant's spouse did not provide a statement for the record of proceeding. *Id.* at 1.

The record contains a copy of the marriage certificate of the applicant and his spouse; a copy of the naturalization certificate of the applicant's spouse; a written assessment from a licensed marriage and family therapist, addressing the current status of the applicant's family and possible consequences of the applicant's return to Mexico; copies of documentation to show that the applicant's spouse's brother is a U.S. citizen and her parents are permanent residents; copies of birth certificates and school records of the applicant's five U.S. citizen children; two letters confirming the applicant's employment and endorsing his good character; copies of financial and tax documents for the applicant; copies of photographs of the applicant and his family, and; copies of documentation of the applicant's criminal convictions and arrest history. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2) of the Act states in pertinent part, that:

- (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 212(h) of the Act provides, in pertinent part, that:

- (h) The Attorney General [now Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

....

- (1)(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 [now the Secretary of Homeland Security (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 record reflects that the applicant has been convicted of two crimes involving moral turpitude. Specifically, on two separate occasions in 1994 the applicant was convicted of willful infliction of corporal injury on a spouse, parent or perpetrator's child, or cohabitant, under section 273.5 of the California Penal Code. Such crime has been designated a crime of moral turpitude. *See Matter of Tran*, 21 I&N Dec. 291 (BIA 1996). Accordingly, the applicant was found inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest his inadmissibility on appeal.

The AAO notes that section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. Section 212(h)(1)(B) of the Act. Hardship the applicant himself experiences upon deportation is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen wife and children. *Id.* If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These 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.

On appeal, counsel contends that the applicant's U.S. citizen spouse and five U.S. citizen children will suffer extreme hardship if the applicant is compelled to leave the United States. *Brief in Support of Appeal*. Counsel discusses the applicant's relationship with his spouse and children, and explains that the applicant provides structure, affection, and financial support for the family. *Id.* at 4-6. Counsel states that the applicant's spouse is a homemaker and will suffer economic hardship if she is forced to provide for her five children alone. *Id.* at 4-5. Counsel explains that the applicant's spouse and children have strong ties to the United States including numerous family members. *Id.* at 3-4. Counsel notes that the applicant and his family are converted Jehovah's Witnesses, and that they would lose the support of their church community should they relocate to Mexico. *Id.* at 4. Counsel emphasizes the importance of the applicant's companionship for his wife, as her family has barred her from the family home due to religious differences. *Id.*

Counsel asserts that the director placed undue emphasis on the fact that the applicant's spouse did not provide a statement for the record of proceeding. *Id.* at 1. Counsel indicates that the provided written assessment from a licensed marriage and family therapist adequately presents the feelings of the applicant's spouse, though counsel submits a statement from the applicant's spouse on appeal. *Id.* at 1-2. Counsel lists the facts of *Matter of O-J-O-*, Interim Decision 3280 (BIA 1996), and states that the applicant's spouse has lived "far longer in the United States" than the applicant in the cited matter, and she has "extensive family and community ties in the United States and none in Mexico." *Id.* at 3. Counsel distinguishes the facts of the present matter from those in *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), emphasizing that the applicant is the sole supporter of his spouse and four children. *Id.* at 5-6.

In a statement from the applicant's spouse, she indicates that her parents and all five siblings live legally in the United States. *Declaration of Elsa Hernandez* at 1. She states that she devotes her time to caring for her children and she does not work. *Id.* The applicant's spouse provides that she visits her extended family and stays in communication with them, yet sometimes she feels chastised by them due to religious differences. *Id.* at 2. The applicant's spouse expressed that she will have difficulty guiding her children without the applicant's presence. *Id.* She states that "[g]iven the choice of having to go to Mexico and risk [her] children's life [sic], education, health, [and] religious freedom, [she] will chose [sic] to remain in the United States" *Id.*

In a written assessment from [REDACTED] licensed marriage and family therapist, she stated that she evaluated the applicant's family in the course of two extended sessions. *Assessment from Carla B. Scarr submitted with Form I-601* (therapist's assessment) at 1 (September 25, 2003). In the assessment, [REDACTED] primarily recounted facts communicated to her by the applicant's family, with some physical observations. *Id.* at 1-10. [REDACTED] indicated that the applicant's spouse receives the support of her community of Jehovah's Witnesses, yet her father and some siblings are not communicating with her due to religious differences. *Id.* at 9. She expressed the opinion that the applicant provides emotional support for his spouse and children, and that the applicant's spouse feels unable to support her children without the applicant's assistance. *Id.*

Upon review, counsel's assertions are not persuasive. Counsel indicates that the applicant's spouse and children will suffer a loss of companionship and family structure should he return to Mexico, and that such effects will be particularly severe for the applicant's spouse as she is not in contact with all of her family members in the United States. However, the applicant has not established that these consequences go beyond those which are commonly experienced by the families of aliens being deported. U.S. court decisions have held 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra*, held further that 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. Moreover, the U.S. Supreme Court additionally 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 noted that the applicant's spouse reported that she and her children will remain in the United States if the applicant returns to Mexico. *Declaration of Elsa Hernandez* at 2. As the applicant's spouse and children have close ties with fellow Jehovah's Witnesses in the United States, they will not be without community support should they remain.

Counsel provides that the applicant's wife and children will suffer financial hardship if the applicant is denied a waiver of inadmissibility, as the applicant is the sole provider for the family. *Brief in Support of Appeal* at 4-5. The AAO acknowledges that the applicant's spouse will likely have to return to the workforce in order to support her children. The record, however, does not establish that the applicant's spouse will be unable to secure her financial situation if the applicant departs the United States. The marriage certificate of the applicant and his spouse, dated November 2, 1995, states that his spouse's occupation is Nursing Assistant. Thus, it appears that she has work experience and employable skills. 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.

Though the applicant's spouse states that she and her children will not leave the United States, the AAO will assess the likely outcome should the applicant's family relocate to Mexico. The applicant has not shown that his spouse or children will suffer extreme hardship should they leave the United States. As noted by the director, the applicant's spouse and children speak Spanish, which would assist in their cultural and economic adjustment. While the applicant's family members would have a different set of challenges in Mexico, the applicant has not presented evidence to show that their potential emotional, educational, and economic difficulties would amount to extreme hardship as contemplated by section 212(h) of the Act. The evidence of record does not support that the consequences would go beyond those which are commonly experienced by the families of aliens being deported.

Despite counsel's assertion, the district director's decision does not show that she placed undue emphasis on the fact that the applicant's spouse did not provide a statement for the record of proceeding. The district director stated that the applicant's spouse "did not submit any sworn statement or any compelling evidence about any hardship that she may experience if [the applicant is] deported." *Decision of the District Director* at 2. Thus, not only did the district director observe the absence of a statement, but also the absence of other documentation that would show the effects of the applicant's removal on his spouse. *Id.* The district director discussed the therapist's assessment and the applicant's criminal history, which reflects that the district director did examine the documentation that was submitted. *Id.* at 2-3.

Counsel lists the facts of *Matter of O-J-O-*, Interim Decision 3280 (BIA 1996), and states that the applicant's spouse has lived "far longer in the United States" than the applicant in the cited matter, and she has "extensive family and community ties in the United States and none in Mexico." *Id.* at 3. However, *Matter of O-J-O-* involved the question of whether the applicant was eligible for suspension of deportation, which considers the potential effects of deportation on the applicant. *Matter of O-J-O-*, Interim Decision 3280, 381 (BIA 1996). As noted above, in the present matter hardship to the applicant is not relevant to whether the applicant is eligible for a waiver. See Section 212(h)(1)(B) of the Act. Thus, *Matter of O-J-O-* and the present matter can be distinguished based on the difference in applicable law. Further, in *Matter of O-J-O-* the Board of Immigration Appeals (BIA) found that the country to which the applicant would be removed, Nicaragua, was

experiencing "[d]epressed economic conditions and [a] volatile political situation throughout [the country.]" *Matter of O-J-O-* at 385. The applicant has presented no explanation or documentation to show that his family would be subject to such circumstances should they relocate to Mexico.

Counsel establishes that the applicant has greater ties to the United States and responsibilities to U.S. citizens than the applicant in *Matter of Shaughnessy*, who was deemed ineligible for an extreme hardship waiver. *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968). However, a review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and children caused by the applicant's inadmissibility to the United States. 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 proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.