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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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**PUBLIC COPY**

[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES

Date: **MAY 02 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:

[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 Guatemala who claims to have first entered the United States in January 1986. On January 7, 1998, he filed an Application for Lawful Permanent Residence (Form I-485) based upon the approval of a Petition for Alien Relative (Form I-130) filed by his permanent resident alien mother. On June 11, 2001, the applicant was advised to by the then Immigration and Naturalization Service (INS), to submit an Application for Waiver of Grounds of Excludability (Form I-601) with a statement of extreme hardship in order to address his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), arising from his conviction on August 4, 1999, for the crime of oral copulation/alcohol in violation of Section 288A(I) of the California Penal Code, a crime involving moral turpitude. The applicant filed the I-601 on September 4, 2001, with the district director but failed to include any evidence demonstrating extreme hardship to his qualifying relative. On August 7, 2003, the district director requested that the applicant provide evidence of extreme hardship to a qualifying relative. However, the applicant failed to provide the evidence. On November 19, 2003, the district director issued a decision denying the waiver application based upon the fact that the applicant had failed to submit evidence demonstrating extreme hardship to a qualifying relative. *See Decision of the District Director*, dated November 19, 2003. Counsel then filed the instant appeal, and attached evidence that it is alleged demonstrates extreme hardship to the applicant's lawful permanent resident mother.<sup>1</sup>

On appeal, counsel has submitted several documents in support of the I-601. The following describes the principal documents submitted: 1) a brief statement from the applicant's mother, [REDACTED] dated December 15, 2003; 2) a letter from the doctor treating the applicant's mother for diabetes and hepatitis C, dated December 2, 2003; 3) a statement from [REDACTED] the applicant's sister; dated December 13, 2003; 4) a statement from [REDACTED] the companion of the applicant's sister, dated December 13, 2003; 5) a statement in support of the waiver from Richard Hunnicutt, an acquaintance of the applicant, dated December 13, 2003; 6) a statement in support of the waiver from [REDACTED] and [REDACTED] dated December 13, 2003; 7) a statement in support of the waiver from [REDACTED], dated December 13, 2003; 8) a copy of a job related reference letter dated July 28, 1997, provided by [REDACTED] of the Fairax Community Adult School on behalf of the applicant; 9) copies of receipts issued to the applicant for rental payments between September and November of 2003; 10) copies of what appear to be two earnings statements issued to the applicant by Valet Parking Service in April and November 2003; 11) copies of documents pertaining to a loan with a balance of \$8,039, and evidence of car insurance payments; 12) a checking account statement for November, 2003 issued to the applicant by Washington Mutual. The entire record was reviewed and considered in rendering a decision on the appeal.

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-

<sup>1</sup> Attached to the Notice of Appeal (Form I-290B), is a statement asserting that the applicant had not received the request for a hardship statement from his mother, and, in the alternative if he had, he had not understood what was required to be submitted in support of the application. While the AAO considers the statement to be deficient, it will give the applicant the benefit of the doubt and accept the additional evidence on appeal.

- (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 crime specified above. Counsel does not contest the fact that the applicant has been convicted of a crime involving moral turpitude and requires a waiver of inadmissibility in order to pursue adjustment of status.

Counsel has submitted a statement accompanying the evidence submitted on appeal. According to counsel's statement, the documents submitted demonstrate that the applicant's mother has serious medical conditions and the applicant provides much needed assistance to his mother as he is the only one living with her and is "indispensable to her medical care and safety." See *Attachment to the Notice of Appeal*, dated December 19, 2003. The AAO will consider the applicant's eligibility for a waiver of inadmissibility under section 212(h)((1)(B) pursuant to our de novo authority. See *Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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."

Counsel asserts that the evidence offered on appeal supports the claim that the applicant's mother will experience extreme hardship. The evidence in support of hardship to the mother is, however, very weak. In terms of the mother's medical condition, the principal evidence is a brief letter from the mother's doctor, which reads in its entirety:

To whom this may concern:

This is to certify that [REDACTED] has been a patient in this clinic for three years. She has the following medical conditions:

A-Diabetes Mellitus

B-Hepatitis C

Issued upon request of interested party.

Truely [sic] Yours,

*Letter from Luzviminda Montecillo, M.D., dated December 2, 2003.*

While the letter does identify the mother's medical conditions, it does not provide any meaningful information from which the AAO may determine whether the applicant would experience extreme hardship without the applicant on account of those conditions. For example, while the letter identifies the medical conditions, it does not discuss their severity, the prognosis, and most importantly, what effect, if any, the conditions have had or will have upon the mother's ability to lead normal life functions and care for herself. In addition, if the applicant has, as is claimed, provided such a vital role in his mother's care, this is something that, it is assumed, the doctor would be aware of and could verify. Furthermore, if the mother's condition were such that she requires a caregiver, the doctor would also be in a position to provide such an opinion. The letter submitted, however, provides none of that information.

In addition to the doctor's letter, counsel has also submitted several affidavits to support the contention that the applicant's mother is dependent upon the applicant for her care. The principal affidavits are those of the applicant's mother, his sister, and his sister's companion. The mother's affidavit is relatively brief, and notes that the applicant lives with her, and states, "he is the only son who takes care of me." *Statement of Epifania Santos Romero*, dated December 15, 2003. These assertions are corroborated by statement of the applicant's sister, Irma Rodriguez Santos, who describes the applicant as "the only child of my mother that she can depend on." *Statement of Irma [REDACTED]* dated December 13, 2003. In addition, Ms. [REDACTED] companion, also provided a similar statement noting that the applicant's mother "relies on him and without him she will be without any help." *Statement of Virgilio Duarte Salvador*, dated December 13, 2003. The statements describe, in general terms, the fact that the applicant assists his mother in daily activities. As noted, however, the information is rather general in nature and does not provide sufficient detail regarding the

mother's condition and why she would be unable to perform these activities herself.<sup>2</sup> In addition, the record also reflects that the applicant's mother has other relatives in the United States, including her daughter. While it may be the case that the applicant's mother lives with him, to the extent that the mother requires assistance, it would be reasonable to assume that should the applicant no longer be permitted to reside in the United States that other family members would assume the responsibility for providing assistance to the mother.

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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

Aside from the claims of hardship to the applicant's mother, no other hardship has been raised. The additional evidence in the record besides the statements consists of items that address the applicant's eligibility for the waiver of inadmissibility as a matter of discretion. It includes the statements of the applicant's family and friends vouching for his honesty, reliability and good work habits. It also includes a letter of recommendation from the ESL Coordinator of the Fairfax Community Adult School, recommending the applicant for a teaching assistant position. The recommendation states that the applicant had been a good student and had provided her with assistance in registering other students for classes, and helping her to coordinate a student talent show in 1992. *See Statement of Jolie Bechet, ESL Coordinator Fairfax Community Adult School*, dated July 28, 1997. The record also contains financial records, presumably to demonstrate that the applicant is employed and financially stable as evidenced by his ability to pay the rent and maintain car insurance and a loan.

Even assuming that the applicant had established his statutory eligibility for a waiver, the AAO finds that the evidence does not demonstrate that the applicant merits a waiver in the exercise of discretion. The record reflects that the applicant's conviction was for engaging in oral copulation with an intoxicated victim, in violation of Section 288A(I) of the California Penal Code. The applicant's conviction occurred in 1997, and the documents in the record reflect that the applicant served 277 days in jail and was required under California law to register with the police as a sex offender. *See Conviction Records*. It is noteworthy that despite the seriousness of the applicant's conviction, the record contains no statement from the applicant himself discussing why, in light of the seriousness of his conviction, he merits the grant of a waiver as a matter of discretion. The record also does not contain anything from the applicant indicating any remorse for his criminal past, or a discussion of how he has turned his life around. Furthermore, although the record contains several statements in support of the waiver from family members, friends and associates, none of those statements express knowledge by the author of the applicant's criminal past, and why the individual nevertheless supports the waiver application. Given the seriousness of the applicant's crime the lack of such

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<sup>2</sup> The AAO has also reviewed the statements provided by other friends and acquaintances of the family. Those statements, however, are also general in nature and add little to an assessment of extreme hardship.

information can only be seen as a significant omission. As a result, the AAO finds that the applicant has not established his eligibility for relief as a matter of discretion.

A review of the record, when considered in its totality, reflects that the applicant has failed to show that his mother would suffer extreme hardship if his waiver of inadmissibility application were denied. In addition, even if the applicant had been able to establish statutory eligibility for relief, the AAO finds that the evidence does not demonstrate that the applicant merits a grant of the 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 his burden.

**ORDER:** The appeal is dismissed.