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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: LOS ANGELES Date: OCT 19 2005

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, Santa Ana, 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 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 remain in the United States with her U.S. citizen spouse and children.

The applicant filed a Form I-601, Application for Waiver of Ground of Excludability, on January 23, 2002. On May 6, 2002, the district director denied the application. *Decision of the District Director*, dated May 6, 2002. On November 12, 2003, Citizenship and Immigration Services (CIS) reconsidered the application and determined that the incorrect law was applied. *Service Motion to Reopen or Reconsider*, dated November 12, 2003. On February 10, 2004, CIS again denied the Form I-601 application. *Decision of the District Director*, dated February 10, 2004. On March 10, 2004, the applicant filed a motion to reopen and/or reconsider the application. On June 9, 2004, the district director granted the motion and reconsidered the application, and again denied the application based on a finding that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative. *Decision of the District Director*, dated June 9, 2004. The applicant filed the present appeal on July 9, 2004.[1]

On appeal, counsel for the applicant contends that the applicant's U.S. citizen spouse and children will suffer extreme hardship should she be prohibited from remaining in the United States. *Brief in Support of the Appeal.*

The record contains a brief from counsel; a report from a marriage and family therapist; letters from the applicant's husband and children in support of the appeal; documentation of the applicants criminal history; copies of photographs of the applicant with her family; a copy of the naturalization certificate of the applicant's husband; copies of birth certificates for the applicant's children; statements from the applicant and her husband in support of the initial Form I-601 application, and; letters from individuals attesting to the applicant's character and community involvement. 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-

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[1] On November 12, 2003, CIS reconsidered the applicant's waiver request due to finding that the application was adjudicated pursuant to an incorrect statement of law. However, in the district director's two subsequent decisions, the same error was made in citing the applicable regulation for the decision. Specifically, the decisions misquote section 212(h)(1)(B) of the Act, effectively eliminating consideration of hardship to the applicant's U.S. citizen children in adjudicating her waiver application. The correct legal standard, as quoted in the present decision, requires a full consideration of hardship to the applicant's U.S. citizen children. Section 212(h)(1)(B).

> (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 -
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> . . . .
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> (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 crimes involving moral turpitude. Specifically, in two separate instances, on July 19, 1991 and on August 14, 1996 the applicant was convicted of petty theft. Accordingly, the applicant was found inadmissible under section 212(a)(2)(A)(i)(I) of the Act.[2] While the applicant's two documented convictions for petty theft have been expunged, state court expungements do not ameliorate the immigration consequences of the convictions. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999). Thus, the applicant has not established that she was erroneously deemed inadmissible.

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 herself experiences upon being found inadmissible 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 spouse 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,

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[2] The record contains evidence that the applicant was also arrested for petty theft on January 15, 1991, and for assault and battery on October 28, 1991. However, the record lacks sufficient documentation to assess the impact these instances have on the applicant's admissibility.

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 husband and four U.S. citizen children will suffer extreme hardship should she be prohibited from remaining in the United States. *Brief in Support of the Appeal*. The applicant's husband expresses that he will endure significant emotional hardship should the applicant's waiver application be denied. *Statement from Applicant's Spouse on Appeal*, dated August 5, 2004. The applicant's spouse states that the applicant plays the most important role in supporting their family. *Id.* In letters from the applicant's children, they express that the applicant provides daily support for them, and that they will miss her if she departs the United States. *Letters from the Applicant's Children in Support of Appeal*. The applicant's oldest daughter indicates that she would have difficulty filling the applicant's role as a caregiver in the family household. *Statement from J* dated August 5, 2004. One of the applicant's daughters explains that the applicant helps her apply medication to her hands to treat a skin condition. *Statement from J* dated August 5, 2004. The applicant stated that her children do not read or write Spanish, and thus they would have difficulty adjusting to life in Mexico should they relocate there. *Statement from Applicant*, dated July 3, 2002.

The applicant submits a letter from a licensed marriage and family therapist, provided that she collected general information about the applicant's family on July 1, 2004, and she interviewed and tested each of the applicant's children on July 9, 2004. *Report from* at 1, dated August 1, 2004. indicated that she reviewed medical documentation that reported that the applicant's son has undergone treatment for asthma and ankle pain. *Id.* further provided that she reviewed documentation that reflects that the applicant's son has learning disabilities. *Id.* stated that she reviewed medical documentation that reported that one of the applicant's daughters, Jackie, has undergone treatment for dermatological conditions for which medication has been prescribed. *Id.* at 2. Dr. noted that the applicant's husband has numerous relatives in Mexico, including his mother, two sisters, and three brothers. *Id.* stated that the applicant's son would fail to receive adequate support for his learning disabilities in Mexico, and the applicant's daughter would likely be unable to obtain sufficient medical care in Mexico for her dermatological condition. *Id.* at 7. indicated that all of the applicant's children are experiencing stress as a result of the applicant's immigration difficulties, and that they would likely remain in the United States should the applicant be compelled to depart. *Id.* at 7-8.

The applicant's husband states that he is employed in the United States at an annual salary of $28,276, and he would be unable to find suitable employment in Mexico. *Statement from Applicant's Husband*, dated October 15, 2002. The applicant's husband indicates that he would endure financial hardship if the applicant relocates to Mexico, as the cost of long distance communication and supporting two households would be high. *Id.* at 2.

Upon review, the applicant has not established that her spouse or children will suffer extreme hardship as a result of her inadmissibility. The applicant's spouse and children all express that they will experience significant emotional hardship due to the applicant's absence. However, the applicant has not established that this consequence goes beyond that which is commonly experienced by the families of aliens deemed inadmissible. 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.

The record contains references to the applicant's son's learning disabilities, including commentary made by However, while states that she reviewed documentation from the Unified School District designating the applicant's son as a special education student, the applicant has not submitted such documentation. Thus, the AAO cannot determine the precise nature of the applicant's son's learning disabilities, or the possible affect of the applicant's absence on his educational development. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). I indicates that she believes that the applicant's son will lack adequate attention to his learning disabilities in Mexico. However, as a U.S. citizen, the applicant's son is not required to live outside of the United States as a result of the applicant's inadmissibility. It is noted that states her opinion that the applicant's spouse and children will not relocate to Mexico with the applicant should her waiver application be denied.

The record contains references to the applicant's daughter's dermatological conditions, including commentary made by However, while states that she reviewed medical records from CalOptima, dated July 9, 2004, the applicant has not submitted such documentation. Thus, the AAO cannot determine the precise nature of the applicant's daughter's condition, what care she requires, and whether and when her condition is expected to heal. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The record does not show that the applicant's daughter will be unable to continue treatment without the assistance of the applicant. indicated that she believes that the applicant's daughter will lack adequate medical care for her condition in Mexico. However, as a U.S. citizen, the applicant's daughter is not required to live outside of the United States as a result of the applicant's inadmissibility. Again, it is noted that expresses her opinion that the applicant's spouse and children will not relocate to Mexico with the applicant should her waiver application be denied.

The applicant's husband provides that he will endure economic hardship if the applicant is prohibited from remaining in the United States. However, as the applicant's husband is employed at an annual salary of $28,276, it appears that he will be able to meet his and his children's expenses in the applicant's absence. The record does not show that the applicant's husband or children depend on her for financial assistance. While the applicant's husband states that he would not have suitable employment options in Mexico, as a U.S. citizen he is not required to live outside the United States should the applicant's waiver application be denied. The applicant's husband references the high cost of communicating with the applicant in Mexico, and the expense of maintaining two separate households. Yet, the record does not show that the applicant will be unable to secure employment outside the United States in order to meet her own expenses. It is noted that 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.

Based on the foregoing, 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 she 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.