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U.S. Citizenship
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FILE: [REDACTED] Office: LOS ANGELES, CA Date: **AUG 08 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:

SELF-REPRESENTED

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, CA and the matter is now before the 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), as an alien convicted of a crime involving moral turpitude. The applicant is married to a United States citizen and is the beneficiary of an approved petition for an alien relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that she may reside with her spouse and children in the United States.

The district director concluded that there was no evidence in the application or in the record to support a finding that the applicant's spouse and children would experience any degree of hardship beyond that typically associated with removal from the United States. The application was denied accordingly. *Decision of the District Director*, dated November 30, 2004.

On appeal, the applicant requests that the application and evidence in the record be reconsidered. *Form I-290B*, dated December 6, 2004.

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

(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 [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 indicates that on September 3, 1997 the applicant was convicted of corporal injury to spouse under California Penal Code 273.5(A), a felony in California, and sentenced to 45 days imprisonment with three years probation.

A section 212(h) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship the alien himself experiences due to separation is irrelevant to section 212(h) waiver proceedings unless it causes hardship to the applicant's spouse and/or children. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The AAO notes that extreme hardship to the applicant's spouse and/or children must be established in the event that they reside in Mexico or in the event that they reside in the United States, as they are not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse and/or children in the event that they reside in Mexico. The applicant's spouse states in her statement that her five children have never been to Mexico and that it would be extreme hardship for them to change schools and adjust to new surroundings where they do not speak the language. Relocation to Mexico could have a severe impact on the children's education and ability to prosper because they do not know the Spanish language. In *Matter of Kao*, 23 I&N Dec. 45 (BIA 2001), the Board of Immigration Appeals found that adolescents would suffer extreme hardship as a result of relocating to a country where they do not know the culture or the language. Thus, the record does reflect that relocation to Mexico will result in extreme hardship to the applicant's children.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his family remains in the United States. The applicant's spouse states that she will suffer emotionally and financially if the applicant is removed from the United States. The applicant's spouse states that although both her and the applicant work, all the household bills are in the applicant's name and she could not pay for childcare without the help of the applicant. The applicant's spouse states that in order to care for their children she would have to quit her job and would be forced to apply for welfare. The applicant submitted various monthly billing statements to support his claim of financial hardship. The record contains an educational loan bill, medical bills, a car payment and rental payments. The record also shows that in 2003 the applicant's spouse earned \$48,910.00 for the year as a licensed vocational nurse. There is no evidence in the record to show that the applicant's spouse could not make lifestyle and/or schedule adjustments to meet the family's financial and childcare needs. The applicant's spouse also states that she and the children, especially their thirteen-year old daughter would suffer emotionally as a result of being separated from the applicant. The AAO notes that no documentation was submitted to show the extent of their emotional suffering and if this suffering goes beyond what would normally be expected upon removal of a family member. The AAO recognizes that the applicant's spouse and children will endure hardship as a result of separation from the applicant. However, their situation, if they remain in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

U.S. court decisions have repeatedly 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and/or 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.