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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: LOS ANGELES, CA Date: **AUG 22 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:



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. 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 U.S. citizen, his spouse is pregnant with their first child and his parents are legal permanent residents. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside with his spouse, parents and child in the United States.

The district director concluded that the applicant had failed to establish extreme hardship would be imposed upon a qualifying relative. The application was denied accordingly. *Decision of the District Director*, dated April 19, 2004.

On appeal, counsel states that the entire family, including the applicant's spouse, soon to be born child and his parents will suffer extreme hardship as a result of the applicant's inadmissibility. *Letter from Counsel*, dated May 20, 2004.

The record includes but is not limited to the following documents: the birth certificate of the applicant's spouse, the lawful permanent resident card of the applicant's father, the U.S. birth certificates of the applicant's spouse's extended family, the lawful permanent resident card of the applicant's mother, a statement from the applicant, a statement from the applicant's mother, a statement from the applicant's spouse, the deed to the applicant's home, a statement from the applicant's sister-in-law, a statement from the applicant's father-in-law, receipts from the applicant's mortgage payment, a copy of the applicant's father-in-law's application for a handicapped license plate, documents establishing the applicant as an owner of a business, health insurance documents, documents showing ownership of two cars and one motorcycle and a 2002 State Department Country Report for Mexico.

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 reflects that the applicant was convicted of theft and unlawful driving and taking of a vehicle on July 8, 1997 and Burglary on September 5, 1997. 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 the applicant's qualifying family members. Hardship the applicant himself experiences due to his inadmissibility is irrelevant to section 212(h) waiver proceedings. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

Extreme hardship to the applicant's qualifying family members 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.

In his statement dated May 4, 2004 the applicant states that his spouse would suffer extreme hardship as a result of his inadmissibility. The applicant's entire family as well as his spouse's entire family live in the United States. The applicant and his spouse live with his spouse's family and the applicant's family lives in a nearby town. He states that they see each other frequently and have a very close relationship. *Applicant's Statement*, dated May 4, 2004. The applicant's mother states that she sees the applicant two times a week and speaks with him on the phone everyday. *Mother's Statement*, dated April 29, 2004.

The applicant states that his spouse will suffer financially if he is removed from the United States. The applicant's spouse is no longer working because she is pregnant with the couple's first child. The applicant's spouse states that the doctor ordered her not to lift anything and she had to stop working because her job required her to lift heavy rugs. *Spouse's Statement*, dated April 29, 2004. The applicant and his spouse recently bought a home and the applicant's income pays for the mortgage. The applicant submitted a copy of the deed of trust for their new home and receipts for bill payments in support of this claim. The applicant also owns part of an auto body shop and he and his wife would lose this investment and income if he were removed from the United States. The applicant submitted a letter from his business partner, a City of Glendora Business Certificate for his business, and a Bureau of Automotive Repair License for his business in support of his claims. However, the record does not indicate that the applicant's spouse is incapable of supporting herself once the baby is born. No documentation was submitted to show that the applicant's spouse could not return to work after their baby is born. In addition, the applicant did not submit any record of his income, so that it could be compared to his expenses.

The applicant also states that his spouse would suffer from his removal because she would no longer have health insurance. The applicant and his spouse are insured through the applicant's business and if the applicant were removed, his spouse would lose this coverage. The applicant submitted statements of benefits for himself and his spouse through COBRA healthcare. Again, the applicant did not provide any documentation to show that his spouse would not be able to receive health insurance through an alternate source. The spouse states in her declaration that if she were separated from the applicant she would have the support of her family in the United States.

Furthermore, the applicant states that his spouse would suffer extreme hardship as a result of relocating to Mexico. The applicant submitted a State Department Human Rights Report for Mexico stating that the standard wage in Mexico does not provide a decent standard of living for a worker and his family. The report also describes incidents of general human rights abuses. The AAO notes that the reports submitted by the applicant do not reflect the hardships specific to the applicant's spouse's situation and the circumstances she will encounter as a result of relocating to Mexico, thereby diminishing the report's value in determining extreme hardship. Therefore, the AAO finds that the current record does not establish that the applicant's spouse will suffer extreme hardship as a result of the applicant's inadmissibility.

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 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(i) 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.