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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

H2

FILE:

[REDACTED]

Office: LOS ANGELES

Date:

DEC 01 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, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Los Angeles, California, denied the waiver application, and it 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 a crime involving moral turpitude. The applicant is the spouse of a naturalized U.S. citizen, the father of two U.S. citizen children and the son of lawful permanent resident parents. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his spouse, children and parents.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated March 31, 2005.

The record reflects that, on October 20, 1995, the applicant was convicted of the use of false citizenship documents in violation of section 114 of the California Penal Code (CPC). The applicant was sentenced to 240 days in jail and 60 months of probation.

On March 4, 2003, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On appeal, counsel contends that the applicant's spouse, children and parents would suffer extreme hardship. *See Applicant's Brief* dated May 25, 2005. In support of the appeal, counsel submitted the above-referenced brief, affidavits from the applicant's spouse and parents, the applicant's children's birth certificates, and medical documentation. The entire record was reviewed and considered in rendering a decision in this case.

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-
  - (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 district director based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's admission to and conviction for use of false citizenship documents, a crime involving moral turpitude. Counsel does not contend the district director's finding of inadmissibility.

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(h) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse, parent, son or daughter of the applicant.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 at 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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 record reflects that, on May 15, 1999, the applicant married his naturalized U.S. citizen spouse, [REDACTED]. [REDACTED] is a native of Mexico who became a lawful permanent resident in 1989 and a naturalized U.S. citizen in 1996. The applicant and [REDACTED] have a five-year old son and a four-year old daughter who are both U.S. citizens by birth. The applicant's father is a native and citizen of Mexico who became a lawful permanent resident in 1990. The applicant's mother is a native and citizen of Mexico who became a lawful permanent resident in 1999. The record reflects further that the applicant and [REDACTED] are in their 30's, the applicant's parents are in their 50's and [REDACTED] may have some health concerns.

Counsel contends that the applicant's parents would suffer extreme hardship if they were to remain in the United States without the applicant because they are very close to the applicant and depend on his aid. In his affidavit, the applicant's father states that, despite the fact that he is employed, the applicant and [REDACTED] provide for him and his wife. Both the applicant's father and mother, in their affidavits, state that they live

with the applicant and his family and the applicant provides them with housing and transportation. They also state that, without the applicant, they would have to find a place to live and would have no transportation, support or care.

There is no evidence in the record to confirm that the applicant's parents reside with the applicant and his family or that he supports them financially. The applicant's tax records reflect that he has never claimed his parents as dependents. There is no evidence in the record to confirm that the applicant's parents are financially or physically dependent upon the applicant. There is no evidence in the record to suggest that the applicant's parents suffer from a physical or mental illness that would cause them to suffer hardship beyond that commonly suffered by aliens and families upon deportation. Additionally, the record reflects that the applicant's parents have family members in the United States, such as their other adult children, who may be able to assist them financially, physically and emotionally in the absence of the applicant.

Counsel contends that [REDACTED] and her children will suffer extreme hardship if they were to remain in the United States without the applicant because [REDACTED] would have to abandon her dream of becoming a nurse in order to work two jobs to be able to support her family, she would not be available to care for the children and provide them with required attention, and the children would be negatively impacted by the absence of the applicant as a father and spouse. [REDACTED] in her affidavit, asserts that she and her children would suffer extreme hardship if she were to remain in the United States without the applicant because she would have to raise her children alone and they would be affected by the absence of the applicant. [REDACTED] also states that she has been ill with severe headaches and extreme anxiety since the denial of the waiver which she fears would grow worse with the absence of the applicant. Finally, [REDACTED] states that she would have to work very hard to support her children.

While it is unfortunate that [REDACTED] may be unable to maintain the family's current standard of living and may have to lower the family's standard of living, the record does not contain any evidence to suggest that [REDACTED] would be unable to financially support her family without the financial support of the applicant. The record indicates that [REDACTED] earns approximately \$21,320 per year in the position of medical assistant. The record also reflects that, in 2000, [REDACTED] earned approximately \$18,138. The record shows that, even without assistance from the applicant or obtaining a second job, [REDACTED] earns sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. While it is unfortunate that [REDACTED] would essentially become a single parent and professional childcare may be an added expense and not equate to the care of a parent, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. It is also unfortunate that [REDACTED] may have to give up her dream of becoming a nurse, but this is also not a hardship that is beyond those commonly suffered by aliens and families upon deportation. The record does not support a finding of financial loss that would result in an extreme hardship to [REDACTED] and her children if [REDACTED] had to support herself and her children without additional income from the applicant, even when combined with the emotional hardship described below.

The medical documentation does not indicate the length of time or frequency with which [REDACTED] has been treated or what is the diagnosis or prognosis for [REDACTED]. The medical documentation indicates that she has been treated with Xanax, however, it does not indicate whether [REDACTED] requires continued treatment or whether her treatment requires the presence of the applicant. Therefore, the medical documentation may be

given little weight. Additionally, the AAO notes that the medical documentation was issued after the Form I-601 was denied and that there was no mention of any psychological problems in the affidavit, which the applicant submitted with the Form I-601. There is no evidence to confirm that [REDACTED] or the applicant's children suffer from a physical or mental illness that would cause them to suffer hardship beyond that commonly suffered by aliens and families upon deportation. While it is unfortunate that the applicant's children will essentially be raised in a single-parent environment and [REDACTED] may not be able to provide as much attention to her children as she would like, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. Moreover, the record reflects that, since 2000, the applicant has worked away from the home, indicating that the children may already have alternative care during the periods in which the applicant and [REDACTED] are absent from the home due to work commitments. Additionally, the record indicates that [REDACTED] has family members in the United States who may be able to assist her financially, physically and emotionally in the absence of the applicant.

Counsel and the applicant's parents do not contend that the applicant's parents would suffer extreme hardship if they were to accompany the applicant to Mexico. The AAO, therefore, is unable to find that the applicant's parents would suffer extreme hardship if they were to accompany the applicant to Mexico.

Counsel contends that [REDACTED] and her children would suffer extreme hardship if they accompanied the applicant to Mexico because [REDACTED] does not have any strong family ties in Mexico, they would be separated from family members in the United States, and [REDACTED] would be unable to continue her nursing studies in Mexico. [REDACTED] in her affidavit, states that she and her children would suffer extreme hardship if they were to accompany the applicant to Mexico because the United States is the only home she has ever known and she cannot see herself living anywhere else.

There is no evidence in the record to suggest that the applicant and [REDACTED] would be unable to find any employment in Mexico. There is no evidence in the record to suggest that [REDACTED] or her children suffer from a physical or mental illness for which they would be unable to receive treatment in Mexico. While the hardships faced by [REDACTED] and her children with regard to adjusting to a lower standard of living, a new culture, economy, environment and separation from friends and family are unfortunate, they are what would normally be expected with any spouse or child accompanying a deported alien to a foreign country. Moreover, while it would be unfortunate that [REDACTED] and the applicant's children would not have the opportunities that are available to them in the United States, such as [REDACTED] nursing studies, these are hardships that would normally be expected with any family accompanying a deported alien to a foreign country.

Finally, the AAO notes that, even if counsel had established the applicant's parents, [REDACTED] and the applicant's children would suffer extreme hardship by accompanying the applicant to Mexico, as U.S. citizens or lawful permanent residents, the applicant's parents, spouse and children are not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, the applicant's parents, [REDACTED] and the applicant's children would not experience extreme hardship if they remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's parents, spouse and children would face extreme hardship if the

applicant were refused admission. Rather, the record demonstrates that the applicant's parents, [REDACTED] and the applicant's children will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a son, spouse or father is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse and children as required under section 212(h) of the Act, 8 U.S.C. § 1186(h). 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 an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.