

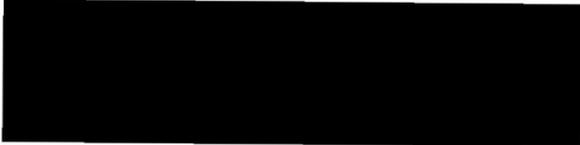
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: LOS ANGELES, CA (SANTA ANA) Date: JUL 05 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. The matter 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 under 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 is the spouse of a naturalized citizen of the United States and the parent of citizens of the United States. He is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his spouse and children.

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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 29, 2004.

On appeal, counsel contends that Citizenship and Immigration Services failed to give any weight to the fact that the applicant's crimes were nonviolent and that the sentences imposed were "misdemeanor sentences". In addition, counsel asserts that the applicant has three children who are citizens of the United States as well as a United States citizen spouse who would be "extremely affected in a most negative way" if the waiver application is denied. *Form I-290B*, dated December 30, 2004. In support of these assertions, counsel submits seven color copies of photographs of the applicant and his family. 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-
 - (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 -
 - (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 . . .

On December 26, 1996, the applicant was convicted of Theft in Long Beach, California. He was placed on probation for one year and ordered to serve 10 days in jail. On November 28, 1988, the applicant was convicted of Burglary in Newport Beach, California. He was placed on probation for three years and ordered to serve 6 days in jail.

A section 212(h) 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 to the citizen or lawfully resident spouse, child or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse and 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include 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.

On appeal, counsel contends that the applicant's spouse and children would suffer extreme hardship as a result of being separated from the applicant. Counsel states that the applicant's spouse and three children will be "extremely affected in a most negative way" if the applicant departs from the United States. *Form I-290B*. The record contains a statement from the applicant's son indicating that he will be hurt if he is separated from his father and that his brother and sister will not understand why the applicant is gone. *Statement of* [REDACTED], dated August 25, 2004. The applicant's son states that he loves the applicant very much. *Id.* The record also contains a statement from the applicant's spouse indicating that if she is separated from the applicant she will feel alone even though her children will be with her. *Statement of* [REDACTED], dated August 25, 2004. While any emotional hardship endured by the applicant's spouse and children is regrettable, the submitted statements do not evidence a level of hardship that can be considered extreme. A child's love for a parent and desire to reside with his parent are normal desires and hardships encountered by individuals separated as a result of inadmissibility. The AAO notes that the applicant's spouse indicates that she would encounter financial hardship in the absence of the applicant. *Id.* (stating that paying the bills "would be difficult with just one person working"). However, the record demonstrates that the applicant's spouse is gainfully employed and fails to specifically demonstrate that she will be unable to meet any necessary financial obligations. Moreover, the record fails to establish that the applicant will be unable to financially contribute to the maintenance of his family from a location outside of the United States. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In addition, the record makes no assertions regarding the factors identified in *Matter of Cervantes-Gonzalez* and therefore, fails to address the qualifying relatives' family ties outside the United States; the conditions in the country or countries to which the qualifying relatives would relocate and the extent of the qualifying relatives' 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 relatives would relocate. In the absence of documentation addressing these subjects, the AAO is unable to determine whether or not extreme hardship would be imposed on the applicant's spouse and children as a result of relocating to Mexico in order to remain with the applicant.

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. Moreover, the AAO notes 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. The AAO recognizes that the applicant's spouse and children would endure hardship as a result of separation from the applicant or as a result of relocating to Mexico in order to remain with the applicant. However, their situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of 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 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.