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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

tlr

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[REDACTED]

FILE: [REDACTED]

Office: CHICAGO, ILLINOIS

Date: **MAY 30 2006**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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 waiver application was denied by the District Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who is married to a U.S. citizen and is the beneficiary of an approved petition for alien relative. The applicant was found to be inadmissible to the United States pursuant to § 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 (burglary). The applicant seeks a waiver of inadmissibility in order to reside with his wife and child in the United States.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. On appeal, counsel asserts that the newly submitted evidence, including affidavits by the applicant's wife, friends, and relatives, a church letter, an employment letter, and other documentation, establishes that the applicant's wife and child would suffer psychological and financial trauma if the applicant is removed from the United States. The AAO has reviewed the entire record and concurs with the district director's decision in this matter.

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) states in pertinent part that:

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-

(1)(A) [I]t is established to the satisfaction of the Attorney General that-

(i) [T]he activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(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 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 applicant was convicted of burglary on June 7, 1995, and the activities for which he was convicted occurred less than fifteen years prior to his application for adjustment of status. The applicant is therefore statutorily ineligible for a waiver pursuant to § 212(h)(1)(A) of the Act. He is, however, eligible to apply for a waiver of inadmissibility pursuant to § 212(h)(B) 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, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

U.S. court decisions have additionally 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), 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 applicant has a U.S. citizen wife and five year old daughter. Counsel asserts that they will suffer financially if the applicant is removed, as he stays home while his wife works, and he works while she is at home. According to the applicant's wife's statement, this arrangement allows them to care for their daughter at home. She wrote that without the applicant's support, she would have to stop working, causing her financial hardship. The record does not contain evidence that the applicant's wife would be unable to make necessary lifestyle changes in the event the applicant is removed. There is no evidence that she would be unable to obtain child care, allowing her to continue working, or that the applicant would be unable to contribute to his family's finances from a location outside the United States. 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.

Counsel also contends that the applicant's wife and child will suffer extreme emotional hardship if the applicant is removed. The AAO recognizes the negative effect the applicant's departure would have on his wife and child; however, this is a common result of the removal of a close family member and does not amount to unusual or extreme hardship. It is noted that counsel does not bring up the issue of the possibility of a relocation to Mexico by the applicant's wife and child. As this scenario is not addressed in the record, the AAO is unable to determine that such a move would cause the applicant's wife and child to suffer extreme hardship.

The totality of the documentation in the record does not establish that the applicant's U.S. citizen spouse and child would suffer hardship that was unusual or beyond that which would normally be expected upon removal.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.