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[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES, CA

Date: **MAY 11 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.

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 Interim District Director, Los Angeles, California. 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 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 crimes involving moral turpitude (receiving stolen property and theft by use of access card). The record indicates that the applicant's mother and child are U.S. citizens. The applicant seeks a waiver of inadmissibility in order to reside with his family in the United States.

The interim district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen mother and the application was denied accordingly. *Interim District Director's Decision*, dated July 14, 2003.

On appeal, counsel asserts that the decision was totally inaccurate and erred in the statement that there was no evidence submitted relating to the hardship of the applicant's qualifying relatives. *Brief in Support of Appeal*, at 1, dated August 28, 2003.

The record includes, but is not limited to, counsel's brief, prior counsel's brief, an affidavit from the applicant's mother, a psychiatrist's letter for the applicant's mother, the grant deed and deed of trust for the applicant's mother's home, utility bills, tax returns for the applicant and his mother and birth certificates for the applicant's family. The entire record was reviewed and considered in arriving at a decision on the appeal.

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 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 a qualifying family member. Counsel asserts that hardship to the applicant's child was not considered. *Brief in Support of Appeal*, at 1. The AAO notes that no contentions were made in the original application in regard to applicant's child, however, the AAO will consider counsel's contentions on appeal. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

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 lawful permanent resident or United States citizen family ties to 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to one of the qualifying relatives must be established in the event that they relocate to Mexico or in the event that they remain 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 first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of relocation to Mexico. The record reflects that the applicant's mother has been in the United States since 1977, she is sixty-five years old and she has two U.S. citizen daughters and one lawful permanent resident daughter. Prior counsel states that the all of her children and grandchildren live in the Los Angeles area. *Prior Counsel's Brief in Support of Appeal*, at 2, dated August 28, 2003. There is no indication that she has any ties outside of the United States, although she was born and raised in Mexico. Prior counsel states that Medicare would not pay for any of the applicant's mother's medical care in Mexico, she would lose her housekeeping business and it would be difficult to reestablish her business in Mexico due to her age. *Id.* at 7. The record includes a doctor's letter which states that the applicant's mother is doing well with good control of her hypertension and hypercholesterolemia. *Letter from Northwest Medical Group*, undated. Furthermore, there is no indication that she could not receive medical care in Mexico. The record is devoid of information on the country conditions in Mexico and specifically to the area that the applicant's mother would relocate to. The AAO notes that relocation involves emotional stress and financial and logistical problems which are common to those involved in the situation. In regard to the applicant's child, no contentions are made as to this prong of the analysis. Based on the entire record, the applicant has not demonstrated that his mother or child would face extreme hardship if they relocated to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event that they remain in the United States. Counsel states that the applicant is his mother's only son, he takes care of her and provides additional support to keep a stable home for his mother. Counsel states that the interim district director failed to consider the emotional and psychological effect of losing her son and that the applicant's sister has her own family and cannot be consumed with the medical, physical and personal problems of her mother. Counsel states that the doctors' letters indicate that the applicant's mother would

suffer greatly as the applicant is the main source of her support and daily care. The AAO acknowledges the important role of a psychiatrist, however, it gives little weight to the submitted report as it is based on a one-time meeting and there is no mention of how the evaluation was conducted, any follow-up appointment, proposed therapy or treatment for the applicant's mother.

Counsel states that the applicant's mother may only work for another two years due to her health problems. The applicant's mother states that work is getting more difficult due to her hypertension, hypercholesterolemia and Bell's palsy. She states that her son is half-owner of her home and his income is required to support the mortgage payments and general household needs. The AAO notes that separation entails inherent emotional stress and financial and logistical problems which are common to those involved in the situation. In addition, there is no evidence that the other children cannot assist the applicant's mother with her financial obligations. In regard to the applicant's child, counsel states that the applicant has provided support to the child. No other assertions have been made in regard to the applicant's child nor has any documentation been submitted to show the extent of the applicant's support. Therefore, the record does not demonstrate extreme hardship to the applicant's mother or child should they remain in the United States without the applicant.

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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 U.S. Supreme Court additionally 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.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen mother or child would suffer hardship that is unusual or beyond that which would normally be expected upon removal. Counsel states that the interim district director failed to consider the age of the applicant's offense and that he has been rehabilitated. Having found the applicant statutorily ineligible for relief, no purpose would be served in an additional discussion of whether the applicant 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. 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.