



U.S. Citizenship  
and Immigration  
Services

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**PUBLIC COPY**

H2



FILE:

Office: LOS ANGELES

Date: MAY 23 2006

IN RE:



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:

SELF-REPRESENTED

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, and 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 seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his permanent resident wife and U.S. citizen son.

The district director concluded that the applicant 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 December 8, 2004.

On appeal, the applicant contends that his family members will suffer extreme hardship if he is prohibited returning to the United States and adjusting his status to permanent resident. *Applicant's Statement on Form I-290B*, dated December 22, 2004.

The record contains a statement from the applicant on Form I-290B; a copy of the applicant's wife's permanent resident card; a copy of the marriage certificate of the applicant and his wife; a copy of the birth certificates for the applicant, his son, and his grandchildren; two letters that indicate the applicant's wife is receiving treatment for depression; copies of prescriptions for the applicant's wife; evidence that the applicant's wife owns real estate; copies of banking records for the applicant and his wife; copies of car insurance cards for the applicant and his wife; a statement from the applicant submitted with the Form I-601 application; Form I-864 affidavits of support executed by the applicant's wife and son on the applicant's behalf; copies of tax records for the applicant, his wife, and son; letters verifying the employment of the applicant's wife and son, and; documentation of the applicant's criminal conviction. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2) of the Act states in pertinent part, that:

- (A)(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) [or] (B) . . . of subsection (a)(2) . . . if -
  - (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -

- (i) . . . the 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
- (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 [now the Secretary of Homeland Security (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 on April 5, 2002 the applicant was convicted of inflicting corporal injury to his spouse under section 273.5(A) of the California Penal Code. In *Matter of Tran*, the Board of Immigration Appeals ("BIA") held that inflicting corporal injury upon a spouse is a crime involving moral turpitude. The BIA stated that, "In our opinion infliction of bodily harm upon a person with whom one has such a familial relationship is an act of depravity which is contrary to accepted moral standards. When such an act is committed willfully, it is an offense that involves moral turpitude." *Matter of Tran*, 21 I&N Dec. at 294(citation omitted). Thus, the applicant's conviction for inflicting corporal injury to his spouse constitutes a crime involving moral turpitude. Accordingly, the applicant was found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest his inadmissibility on appeal.

The AAO notes that section 212(h)(1)(B) 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. Hardship the applicant himself experiences due to his inadmissibility is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's permanent resident wife and U.S. citizen son. *Id.* If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) 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.

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).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998), held that, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and that, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant’s wife and son would possibly remain in the United States if the applicant departs. Separation of family will therefore be carefully considered in the assessment of hardship factors in the present case.

On appeal, the applicant contends that his wife and son will suffer extreme hardship if he is prohibited returning to the United States and adjusting his status to permanent resident. *Applicant’s Statement on Form I-290B*, dated December 22, 2004. The applicant states that his family is experiencing extreme emotional hardship due to his immigration difficulties, and that his wife is receiving treatment for severe depression. *Id.* The applicant indicates that his entire family is in the United States, and he has four grandchildren who are accustomed to his presence. *Id.* The applicant stated that he and his wife have resided in the United States for over 20 years. *Applicant’s Statement in support of Form I-601 Application*, dated March 27, 2003. The applicant provided that his family is close and they provide moral and emotional support for each other. *Id.* The applicant stated that he and his family members hold “very good jobs.” *Id.*

The applicant’s wife stated that the applicant provides emotional and psychological support for her and their family. *Statement from Applicant’s Wife in support of Form I-601 Application*, dated March 27, 2003. She indicated that she would not be able to have financial stability in the applicant’s absence. *Id.* The applicant’s wife stated that, if the applicant is prohibited from residing in the United States, it will create extreme hardship for her, her children and grandchildren. *Id.*

Upon review, the applicant has failed to show that a qualifying family member will suffer extreme hardship should he be prohibited from residing in the United States. The applicant and his wife claim that their grandchildren will experience extreme hardship if the applicant’s waiver application is denied. However, hardship to the applicant’s grandchildren is not a relevant concern in the present matter. Section 212(h)(1)(B) of the Act. While the AAO acknowledges that the applicant’s grandchildren will bear consequences if separated from the applicant, only hardship to the applicant’s wife or son may be properly considered in this section 212(h) waiver proceeding.

The applicant explains that his wife is experiencing significant psychological difficulty due to his inadmissibility, and she is undergoing treatment for depression. The applicant’s wife stated that the applicant provides emotional support for her and her family. The record contains a brief letter from [REDACTED] L.C.S.W., dated October 2, 2001, in which he attested that the applicant’s wife received treatment for depression due to a mistaken restraining order and charge of domestic violence against the applicant. The record contains a second short letter from [REDACTED] dated December 14, 2004, in which he noted that the applicant’s wife was treated for depression due to the potential deportation of the applicant. [REDACTED] expressed the opinion that the applicant’s deportation “would have a devastating impact on [the applicant’s

wife's] depression and related impact on her family." *Letter from [REDACTED]*, dated December 14, 2004. However, the brief letters are of limited utility, as they provide only very general statements regarding the mental health of the applicant's wife. They do not reflect the length or duration of the applicant's wife's treatment, and they do not indicate that she requires continuing care. More importantly, they do not provide a detailed analysis of the applicant's wife's condition or discussion of her potential recovery, such that the AAO can assess the severity of her mental health status or the possible effects that the applicant's absence may have on her.

The applicant and his wife reference emotional hardship to their son should the applicant be prohibited from residing in the United States. However, the record does not contain explanation or documentation to clearly show what psychological effects he would suffer.

The AAO appreciates that the applicant's absence will have significant emotional consequences for the applicant's wife and son. Yet, the applicant has not shown that his wife or son will suffer emotional consequences that are beyond those ordinarily experienced by the family members of those who are deemed inadmissible. U.S. court decisions have 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.

The applicant's wife provided that she will experience financial hardship without the applicant's assistance. However, the applicant has not provided sufficient documentation to identify his wife's or son's expenses or current income, such that the AAO can assess the economic impact the applicant's absence would have on them. For example, while the record shows that the applicant's wife owns real estate, there is no indication of whether she must pay a monthly mortgage for the property. The applicant submitted copies of automobile insurance cards, yet there is no evidence to reflect whether the applicant or his wife must make monthly payments for automobile loans. Further, both the applicant's wife and son submitted Forms I-864, Affidavit of Support, on the applicant's behalf. These Forms I-864 show that the applicant's wife and son were employed, earning compensation above the poverty line. The applicant stated that his family members hold "very good jobs." *Applicant's Statement on Form I-290B*, dated December 22, 2004. It is unclear whether he was referring to his wife or son, yet it is clear that the applicant's wife and son are capable of earning income. Thus, the record does not contain adequate documentation in order for the AAO to evaluate the economic impact the applicant's absence would have on his wife or son. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The applicant has not shown that his wife or son would endure a financial burden that amounts to extreme hardship.

The applicant has not addressed whether his wife or son would experience hardship if they relocate to Mexico with him. The record does not indicate whether they have family ties in Mexico, whether the applicant's son speaks Spanish, or what job prospects would await the applicant's wife or son should they relocate abroad. Thus, the applicant has not established that relocating to Mexico constitutes an extreme hardship for his wife or son, and it appears they may reasonably choose to relocate with him in order to maintain family unity. As the applicant's wife is a native of Mexico, it is assumed that she would not be faced with the challenges of adapting to an unfamiliar language or culture. Further, it is noted that, as a permanent resident and U.S. citizen, the applicant's wife and son are not required to reside outside of the United States as a result of the applicant's inadmissibility.

All prospective hardships to the applicant's family members have been considered in aggregate. Based on the foregoing, the applicant has not submitted sufficient documentation to show that, should he be prohibited from residing in the United States, a qualifying relative will suffer hardship that is unusual or beyond that which would normally be expected upon deportation. 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.