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U.S. Citizenship
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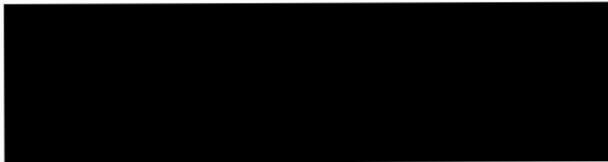


FILE: [REDACTED] Office: LOS ANGELES Date: **MAY 26 2006**

IN RE: [REDACTED]

PETITION: 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 PETITIONER:



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 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 U.S. citizen. 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.

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 17, 2004.

The record reflects that, on December 24, 1990, the applicant was convicted of petty theft and was sentenced to 3 years of probation with 10 days in jail. On June 12, 1991, the applicant was convicted of felony burglary and was sentenced to 4 years in jail, which were suspended in favor of 36 months of probation with 365 days in jail. On February 8, 1994, the applicant was convicted of felony burglary and was sentenced to 4 years in jail.

On October 24, 1997, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an I-130 Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse. The record shows that the applicant appeared at CIS' Los Angeles District Office on August 26, 2002. The applicant admitted that he had been convicted of one count of petty theft and two counts of felony burglary.

On December 13, 2002, 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 November 17, 2004, the district director issued a notice of denial of the application because the applicant was convicted of crimes involving moral turpitude and had failed to establish that extreme hardship would be imposed on a qualifying family member.

On appeal, the applicant asserts that his wife and the children they have raised as their own would experience extreme hardship if he were to be removed to Mexico. *See Applicant's Brief* dated December 14, 2004. In support of the appeal, the applicant submitted the above-referenced brief, an affidavit from his wife, an affidavit from the applicant, affidavits from the applicant's wife's niece and nephew, a doctor's letter in regard to the applicant's medical conditions, copies of photographs of the applicant and his family, and certificates that the applicant is attending English language classes. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible

(B) Multiple criminal convictions.-Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more 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), (B) . . . 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 convictions for one count of petty theft and two counts felony burglary, crimes involving moral turpitude. Counsel does not contest the district director's determination of inadmissibility. The AAO also finds that the applicant is inadmissible pursuant to section 212(a)(2)(B) for having been convicted of more than two crimes for which he was sentenced in aggregate to more than 5 years of confinement.

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 July 1, 1995, an immigration judge ordered the applicant deported to Mexico. On the same day, the applicant was deported to Mexico. The record reflects that the applicant reentered the United States without a lawful admission or parole and without permission to reapply for admission, on an unknown date, but prior to March 29, 1997, the date on which the applicant married his U.S. citizen wife, in Las Vegas, Nevada. On September 20, 2001, the applicant pled guilty to disturbing the peace and received a fine. [REDACTED] may have a daughter from a previous relationship. The applicant and [REDACTED] are in their 40's, the applicant has some health concerns and [REDACTED] does not have any health concerns.

The applicant, in his affidavit, contends that he will suffer psychological and financial hardship if he is removed from the United States. As discussed above, hardship to the alien himself is not a permissible consideration under the statute. Thus, hardship to the applicant will not be considered in this decision, except as it may affect his wife, the only qualifying relative.

The applicant contends that "the children we have raised as our own" will suffer extreme hardship if he is returned to Mexico. The applicant refers to exhibits, which include [REDACTED] affidavit and affidavits from [REDACTED] niece and nephew. The affidavits from [REDACTED] niece and nephew state that the applicant has been like a father to them and that it would be a hardship for them if he were to return to Mexico. An affidavit from [REDACTED] sister indicates that these children are under the custody of [REDACTED] sister and that the applicant acts as a father figure in their lives. There is no evidence in the record to indicate that these children are citizens or lawful permanent residents of the United States. There is also no evidence that the applicant has officially adopted these children or that they are his stepchildren by marriage. Therefore, these children are not qualifying family members since the applicant is not their father, even though he may act as a father figure to them. Therefore, hardship to [REDACTED] niece and nephew is not hardship to qualified family members. [REDACTED], in her affidavit, states the applicant "helped me raise my children . . . each would be devastated if he were no longer a part of their daily lives." The record contains evidence that [REDACTED] and the applicant claimed a daughter [REDACTED], on their 2000 taxes. However, there is no other evidence in the record to suggest that the applicant has stepchildren or that they would suffer extreme hardship should he be returned to Mexico. There is no evidence in the record that the applicant's stepchildren are citizens or lawful permanent residents of the United States. Additionally, the applicant's stepchildren may no longer be qualifying family members since they may be over the age of 21. As such, the AAO cannot find that the applicant has stepchildren who are qualifying family members who would suffer extreme hardship if the applicant returned to Mexico.

██████████ in her affidavit, asserts she would suffer financial hardship if she were to remain in the United States without the applicant. Financial records indicate that ██████████ has contributed substantially to the couple's household income over the years, averaging 54%, or approximately \$21,607. The record does not support a finding of financial loss that would result in an extreme hardship to her if she had to support the family without the additional income provided by the applicant, approximately \$18,348. The record reflects that ██████████ has family members who may be able to provide financial assistance in the absence of the applicant. The record shows that, even without assistance from family members, ██████████ has, in the past, earned sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>.

██████████ in her affidavit, asserts that she would suffer emotional hardship if she remained in the United States without the applicant. ██████████ states the applicant "injured in (sic) his back during working (sic) . . . he also has epilepsy, and I am very worried about his health condition because his illness may get worse as a consequence of the constant preoccupation, stress and deficient emotional condition that a deportation can carry to his life . . . I am very dependent of his love, his care, his protection, his presence, and the life he has shared with me . . . my life will be empty and my heart broken . . . my life will suffer a very harmful emotional and psychological impact if my husband Mario is deported . . . it would be devastating to me." A medical report indicates that *the applicant* "was diagnosed to have liver problems for which several tests is (sic) being ordered . . . the patient is having occasional episodes of seizure disorder for which he is taking Dilantin." The medical report does not give a prognosis for the applicant's health conditions and there is no evidence in the record to suggest that he would be unable to obtain any treatment in Mexico. As noted above, hardship to the applicant is not a consideration in this matter. Moreover, there is no evidence in the record to suggest that ██████████ suffers from a physical or mental illness that would cause her to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. Additionally, ██████████ has family members who may be able to provide emotional support in the absence of the applicant.

The applicant and ██████████ do not assert that ██████████ would suffer hardship if she returned to Mexico with her husband. The AAO is, therefore, unable to find that ██████████ would experience hardship should she choose to join her husband in Mexico. Additionally, the AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request.

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 spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that ██████████ will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse 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 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th 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 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.