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U.S. Citizenship
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FILE:

Office: LOS ANGELES, CALIFORNIA

Date: SEP 18 2006

IN RE:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador 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 a crime involving moral turpitude. The applicant is the father of two U.S. citizen children and the son of a lawful permanent resident, and he now 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 children and mother.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director, dated March 2, 2005.*

On appeal, counsel contends that Citizenship and Immigration Services (the Service) erred as a matter of law in finding that the applicant failed to meet the burden of establishing extreme hardship to his qualifying relative necessary for a waiver under 212(h) of the Act. *Form I-290B, dated July 23, 2004.* Counsel also asserts that the applicant has been rehabilitated. *Id.*

In support of his assertions, counsel submits a brief. The record also includes, but is not limited to, a Psychological Evaluation, Centro de Desarrollo Personal, written by [REDACTED] dated February 2, 2005; court record regarding violation of Section 10851(A) Vehicle Code, County of Los Angeles, dated June 27, 1987 through December 31, 1987; court record of dismissal of violation of Section 10851(A) Vehicle Code, County of Los Angeles, dated July 20, 2001; petition and order demonstrating the applicant's fulfillment of probation, dated July 20, 2001; court record showing the applicant violated probation, dated June 11, 1992; court judgment record regarding violation of Section 23152(B) Vehicle Code, dated May 11, 1990; Advisement of Rights, Waiver, and Plea Form noting the applicant's previous conviction under Section 23152(A) Vehicle Code on February 19, 1986; court charging record, County of Los Angeles, dated January 19, 1990; court expungement order, Superior Court of California, Los Angeles, dated December 11, 2000; petition and order demonstrating the applicant's fulfillment of probation, dated December 6, 2000; court record regarding violation of Section 273.5(A) Penal Code, County of Los Angeles, dated August 18, 1997 through December 31, 1997; court expungement order, Superior Court of California, Los Angeles, dated December 19, 2000; petition and order demonstrating the applicant's fulfillment of probation, dated December 18, 2000; docket report, Superior Court of California, County of Orange, dated August 29, 2002 through September 9, 2003; court record regarding violation of Section 273.5(A) Penal Code, County of Los Angeles, dated August 18, 1997 through October 28, 2004; court record regarding violation of Section 273.5(A) Penal Code, County of Los Angeles, dated August 18, 1997 through November 15, 2000; docket report, Superior Court of California, County of Orange, dated August 29, 2002 through December 10, 2003; court record regarding violation of Section 23152(B) Vehicle Code, County of Los Angeles, dated January 22, 1990 through December 8, 2000; FBI record, dated July 21, 2004; copies of U.S. birth certificates of the applicant's children; a copy of the applicant's mother's resident alien card; a copy of the applicant's birth certificate from El Salvador; earnings statements for the applicant, tax statements for the applicant, 2000-20002; and an employment letter for the applicant; The entire record was considered in rendering a decision on the appeal.

The applicant has the following criminal history. On February 19, 1986 the applicant was convicted under section 23152(A) of the California Vehicle Code of driving under the influence. *Advisement of Rights, Waiver, and Plea Form noting the applicant's previous conviction under Section 23152(A) Vehicle Code on February 19, 1986.* On July 17, 1987 the applicant was convicted under section 10851(A) of the California Vehicle Code of taking a vehicle without the owner's consent. *Court record regarding violation of Section 10851(A) Vehicle Code, County of Los Angeles, dated June 27, 1987 through December 31, 1987.* On July 20, 2001, the applicant's conviction for this offense was expunged. *Court record of dismissal of violation of Section 10851(A) Vehicle Code, County of Los Angeles, dated July 20, 2001.* On May 11, 1990 the applicant pled no contest to section 23152(B) of the California Vehicle Code of driving under the influence with 0.08 percent or more of alcohol in his blood. *Court judgment record regarding violation of Section 23152(B) Vehicle Code, dated May 11, 1990.* The applicant received a suspended sentence and was placed on probation, which he violated on June 11, 1992. *Court record showing the applicant violated probation, dated June 11, 1992.* This violation resulted in his driver's license being suspended. *Id.* The applicant withdrew his guilty plea and on December 11, 2000, had this offense expunged from his record. *Court expungement order, Superior Court of California, Los Angeles, dated December 11, 2000.* On December 31, 1997 the applicant was convicted under section 273.5(A) of the California Penal Code for inflicting corporal injury on his current or former spouse or cohabitant. *Court record regarding violation of Section 273.5(A) Penal Code, County of Los Angeles, dated August 18, 1997 through October 28, 2004.* On December 19, 2000 the applicant had this offense expunged from his record. *Court expungement order, Superior Court of California, Los Angeles, dated December 19, 2000.* On October 9, 2002 the applicant was convicted under section 273.5 of the California Penal Code for inflicting corporal injury on his current or former spouse or cohabitant. *FBI record, dated July 21, 2004; docket report, Superior Court of California, County of Orange, dated August 29, 2002 through December 10, 2003.* The AAO recognizes that state court expungements are no longer considered to ameliorate the immigration consequences of a conviction. *Matter of Roldan, 22 I&N Dec. 512 (BIA 1999) vacated sub nom. Lujan-Armendariz v. INS, 222 F.3d 728 (9th Cir. 2000).* Although Roldan was vacated sub nom. in *Lujan-Armendariz v. INS, 222 F.3d 728 (9th Cir. 2000)*, the Ninth Circuit's ruling was limited to state convictions under the Federal First Offender Act. The Federal First Offender Act sections are found at 18 U.S.C. section 3607(a) which refers to special probation and expungement procedures for drug possessors. The applicant's convictions do not involve any drug possession offenses. As such, his expungements are still convictions for immigration purposes.

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 -

- (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 . . .

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. 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.

Extreme hardship to the applicant's children or mother must be established in the event that he or she resides in El Salvador or the United States, as he or she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's U.S. citizen son travels with the applicant to El Salvador, the applicant needs to establish that his son will suffer extreme hardship. The applicant's son was born in the United States and is currently nine years old. *See U.S. birth certificate of the applicant's son.* His sister, grandparents, cousins, aunts and uncles all reside in the United States. *Psychological Evaluation, Centro de Desarrollo Personal, written by [REDACTED] dated February 2, 2005.* The record does not mention the whereabouts of his mother, nor does it discuss what relationship, if any, she has with her son. The applicant's son has a very good relationship with his relatives in the United States, particularly with his grandparents. *Id.* The applicant's son has one aunt in El Salvador, with whom he has no contact. *Id.* The applicant's son speaks poor Spanish, and he is unable to read or write in Spanish. *Id.* He speaks English fluently. *Id.* He is too young to work and is financially dependent upon the applicant. *See the applicant's tax statements 2000-2002 listing the applicant's son as his dependent.* The applicant's son is experiencing severely elevated levels of depression, anxiety, and a much lower than average self concept. *Psychological Evaluation, Centro de Desarrollo Personal, written by [REDACTED] dated February 2, 2005.* According to [REDACTED] break up of the applicant's son's family and current style of life would result in both immediate and long-term damage to him. *Id.* Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's child and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's son or any history of treatment for the generalized anxiety disorder suffered by the applicant's child. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship

with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Additionally, the only documentation included in the record regarding the applicant's son's family ties and his inability to speak Spanish comes from the psychologist's affidavit. Based on this information, the AAO finds that the applicant's son would not suffer extreme hardship if he resided in El Salvador with the applicant.

If the applicant's U.S. citizen son resides in the United States, the applicant needs to establish that he will suffer extreme hardship. The applicant's son lives with the applicant. *Form I-601*. The record makes no mention to what extent the applicant's son's mother is involved with his life. The applicant's son is financially dependent upon the applicant. *See tax statements, 2000-20002*. The applicant's son is experiencing an array of difficulties related mostly to anxiety, withdrawal and depression. *Psychological Evaluation, Centro de Desarrollo Personal, written by [REDACTED] dated February 2, 2005*. The applicant's son is not reacting well to changes, hence a separation from his father would further aggravate his current emotional state. *Id.* A separation of this family, in any form or fashion, would result in very damaging psychological effects for the applicant's son. *Id.* As previously noted, the psychological affidavit submitted into the record was based on one consultation with the applicant's son, thus diminishing the value of its assessment. 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. The AAO recognizes that the applicant's child will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

The record does not address what hardship, if any, the applicant's U.S. citizen daughter would suffer if she resided in El Salvador or remained in the United States. The AAO does not find that the applicant's daughter would suffer extreme hardship if she accompanied the applicant to El Salvador or if she remained in the United States.

If the applicant's lawful permanent resident mother travels with the applicant to El Salvador, the applicant needs to establish that his mother will suffer extreme hardship. The applicant's mother was born in El Salvador. *Form G-325A*. The applicant's mother speaks Spanish fluently and speaks English with a 5% proficiency level. *Psychological Evaluation, Centro de Desarrollo Personal, written by [REDACTED] dated February 2, 2005*. The applicant's mother suffers from high blood pressure, gastritis, severe back pain, and she is taking a number of medications. *Id.* The AAO observes that although the applicant's mother's physical health conditions are noted by the psychologist, the record fails to include any additional documentation from a medical health professional that may be treating the applicant's mother. Additionally, while the AAO acknowledges the inconvenience of these health issues, it notes that the applicant's mother's ailments are non-life threatening and she is still able to function. The AAO finds that the applicant's mother will not suffer extreme hardship if she resides in El Salvador.

If the applicant's lawful permanent resident mother resides in the United States, the applicant needs to establish that his mother will suffer extreme hardship. According to the psychologist's affidavit, the applicant helps his mother with money, takes her to the doctor, and drives her wherever she needs to go. *Psychological*

Evaluation, Centro de Desarrollo Personal, written by [REDACTED] dated February 2, 2005. There are no additional documents in the record that discuss how the applicant's mother depends upon the applicant. The applicant's mother is experiencing symptoms of a Major Depressive Disorder. *Id.* If the applicant's mother remained in the United States, the loss of the applicant would further increase her levels of depression and anxiety, and possibly activate suicidal thoughts. *Id.* As previously stated, the evaluation of the applicant's mother's mental state was assessed after one meeting with the psychologist. A single interview does not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. *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. The AAO does not find that the applicant's mother would experience extreme hardship if she remained in the United States.

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

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(2)(A)(i)(I) 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.