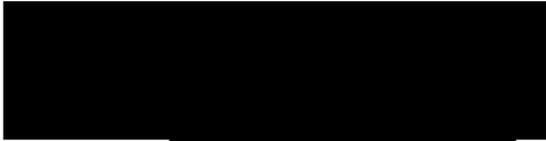




U.S. Citizenship
and Immigration
Services

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

H12



PUBLIC COPY

FILE:



Office: LOS ANGELES, CA

Date:

APR 11 2007

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) and

ON BEHALF OF APPLICANT:



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 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 crimes involving moral turpitude. The applicant is the spouse of a U.S. citizen and the father of one U.S. citizen daughter. 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 and child.

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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated January 31, 2005.

The record reflects that, on August 30, 1993, the applicant was convicted of burglary in violation of section 459 of the California Penal Code (CPC). The applicant's sentence was suspended in favor of 36 months of probation and seven days in jail. On February 8, 1994, the applicant was convicted of attempted burglary in violation of sections 664 and 459 of the CPC. The applicant's sentence was suspended in favor of 24 months of probation.

On December 15, 2000, the applicant married [REDACTED] a U.S. citizen. On March 9, 2001, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on August 28, 2001. September 25, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on the approved Form I-130. On June 6, 2002, the applicant appeared at Citizenship and Immigration Services' (CIS) Los Angeles, California District Office. On February 5, 2004, 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 appeal, counsel contends that the applicant's wife and child will suffer extreme hardship if the applicant is denied a waiver. *See Counsel's Brief*, dated March 28, 2005. In support of her contentions, counsel submitted the referenced affidavit, updated financial documentation and copies of documentation previously provided. The entire record was reviewed in rendering a decision in this case.

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

- (1) Criminal and related grounds. —
 - (A) Conviction of certain crimes. —
 - (i) In general. — Except as provided in clause (ii), any 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:

Waiver of subsection (a)(2)(A)(i)(I) . . .

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I). . . 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

- (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 convictions for burglary and attempted burglary, crimes involving moral turpitude. Counsel does not contest the district director's determination of inadmissibility.

A section 212(h) waiver is either dependent upon a showing of rehabilitation, if it has been more than 15 years since the activities occurred that gave rise to the inadmissibility, or that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse, child or parent of the applicant. In the present case, the applicant's convictions occurred less than 15 years ago. Therefore, he must prove that his removal would constitute an extreme hardship for his U.S. citizen spouse, parent or child.

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 or parent 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, 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 [REDACTED] is a U.S. citizen by birth. The applicant and [REDACTED] have a five-year old daughter who is a U.S. citizen by birth. The record indicates that the applicant and [REDACTED] are in their 30's and there is no evidence in the record that [REDACTED] or the applicant's child have any health concerns.

On appeal, counsel asserts that [REDACTED] and her daughter would suffer extreme hardship if they were to remain in the United States without the applicant because he is an important part of their lives and the separation would be devastating. Counsel asserts that [REDACTED] depends on the applicant for emotional and economic support and that they have created a close-knit family who are dependent upon one another. Counsel asserts that [REDACTED] especially requires the applicant's emotional and physical support because her mother suffers from a terminal condition, abdominal cancer. Counsel asserts that [REDACTED]' mother relies on her and the applicant to assist and care for her. Counsel asserts that [REDACTED] will not only lose the support of her husband in raising their daughter, but also her pillar of support in dealing with her mother's terminal cancer. Counsel asserts that there is no way that [REDACTED] could assume the responsibilities of raising her daughter and caring for her mother without the applicant.

[REDACTED] in her affidavit, states that she relies on the applicant for financial and emotional support. She states that her daughter is very attached to the applicant and she believes that her daughter needs a strong father figure as well as a strong mother figure in order to instill a balance of principles and lay a solid foundation for her future as a good and responsible human being. She states that her mother has abdominal cancer and relies on her to assist and care for her. She states that both she and her daughter turn to the applicant to cope with her mother's deteriorating health.

Medical documentation indicates that, in February 2003, [REDACTED] mother was discharged from the hospital and underwent an endoscopic ultrasound with a possible fine needle aspiration of the pancreas in March 2003. Medical documentation states [REDACTED] mother completed a course of radiation on June 12, 2003. The medical documentation does not indicate [REDACTED] mother's diagnosis during these treatments and there is no current diagnosis or prognosis since June 2003. The record does not contain any evidence that establishes that [REDACTED] mother is financially or physically dependent upon the applicant or [REDACTED]

Financial records indicate that, in 2004, [REDACTED] earned approximately \$44,922. The record shows that, even without assistance from the applicant, [REDACTED], in the past, has earned sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. While it is unfortunate that [REDACTED] will essentially become a single parent, and that professional childcare may be an added expense and not equate to the care of a parent, this is not a hardship that is beyond those commonly suffered by aliens and families upon removal. The AAO notes that [REDACTED] may have to lower her standard of living. However, there is no evidence in the record to support a finding of financial loss that would result in an extreme hardship to [REDACTED] and her daughter if [REDACTED] had to support them without additional income from the applicant, even when combined with the emotional hardship described below.

There is no evidence in the record that demonstrates that [REDACTED] or her child suffer from a physical or mental illness that would cause them to suffer hardship beyond that commonly suffered by aliens and families upon removal. As discussed above, the evidence submitted in relation to the medical condition of [REDACTED] mother is insufficient to establish the exact nature of her illness or that it is terminal, requiring the assistance of [REDACTED], which would in turn cause [REDACTED] hardship beyond that commonly suffered by aliens and families upon removal. If [REDACTED] and her daughter remain together in the United States, she and her daughter would not only be separated from the applicant but [REDACTED] would witness her child's separation from the applicant. While the AAO acknowledges the hardship to [REDACTED] and her daughter in this eventuality, the record does not establish it as hardship beyond that commonly suffered by aliens and families upon removal.

Counsel asserts that the applicant's spouse would face extreme hardship if she relocated to Mexico in order to remain with the applicant. Counsel asserts that [REDACTED] would have to leave behind her terminally ill mother. Counsel asserts that the applicant would find it impossible to find a job in Mexico making the same salary that he does in the United States, which would cause an economic strain on the family. [REDACTED] in her affidavit, states that she does not think it would be possible for her to obtain employment in Mexico similar to the employment she has in the United States. She states that her daughter has become accustomed to the lifestyle they have developed in the United States and she would be denied the educational opportunities and economic necessities she requires to develop into a productive member of society. She states that she has a close relationship with her mother who relies upon her for care and assistance due to her terminal condition. She states that she and her daughter know nothing of life outside the United States and that all of her family resides in the United States. Finally she states that her daughter would lack the benefits she receives in the United States.

Having analyzed the hardships that counsel and [REDACTED] claim [REDACTED] and her daughter would suffer if they were to accompany the applicant to Mexico, the AAO finds that they do not constitute extreme

hardship. There is no evidence in the record that established that the applicant and Ms. Macias would be unable to obtain *any* employment in Mexico. While the employment they may be able to obtain may not be comparable to the employment they have in the United States, economic detriment of this sort is not unusual or extreme. *See Perez v. INS, Supra; Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir.1986). As previously discussed, the evidence in the record is insufficient to prove that [REDACTED] mother suffers from a mental or physical illness that would cause [REDACTED] to suffer hardship beyond that commonly suffered by aliens and families upon removal. While the hardships that would be faced by [REDACTED] and her daughter relocating to Mexico--adjusting to a new culture, country, economy, environment, separation from friends and family and an inability to obtain opportunities that are available to them in the United States--are unfortunate, they are what would normally be expected by any spouse accompanying a removed alien to a foreign country. Finally, the AAO notes that, as U.S. citizens, the applicant's spouse and child are not required to reside outside of the United States as a result of the denial of the applicant's waiver request and, as discussed above, [REDACTED] and her daughter would not experience extreme hardship if they remained in the United States without the applicant.

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 or her daughter would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that both would face the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is found inadmissible to 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, which meets the standard in section 212(h) of the Act, 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 has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(h) of the Act. 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.

The AAO notes that the record contains a written statement from the applicant in regard to his entries into the United States. The statement is in Spanish and the handwriting and signature matches that of the applicant.

The statement indicates that, in August 1987, the applicant entered the United States by presenting himself to an immigration officer at the San Ysidro, California Port of Entry. When asked by the immigration officer where he was born, the applicant responded that he had been born in San Pedro, California. The statement indicates that, in January 1992, the applicant again entered the United States by presenting himself to an immigration officer at the San Ysidro, California Port of Entry. When asked by the immigration officer where he was born, the applicant responded that he had been born in San Pedro, California. The record reflects that the applicant was born in Mexico and that neither of his parents have any legal status in the United States. The AAO, therefore, finds that the applicant may also be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for obtaining admission to the United States by willful misrepresentation of a material fact or by fraud in 1987 and 1992.

In proceedings for 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.