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U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

*H12*

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES, CA Date:

APR 23 2007

IN RE:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Sections 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 cursive script, 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 is 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 naturalized U.S. citizen, the father of three U.S. citizen children and the son of a naturalized U.S. citizen mother. 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, children and mother.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The district director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated May 11, 2005.

The record reflects that, on January 8, 1988, the applicant was convicted of two counts of assault with a deadly weapon not a firearm likely to produce great bodily harm in violation of section 245(a)(1) of the California Penal Code (CPC). The applicant was sentenced to 2 years of probation and 30 days in jail. On March 30, 1997, the applicant married [REDACTED]. On January 9, 1998, Ms. [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on December 11, 1998. On January 14, 1998, Ms. [REDACTED] filed a second Form I-130, which was approved on September 14, 2001. On April 26, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on the approved Form I-130. On May 22, 2003, the applicant appeared at Citizenship and Immigration Services' (CIS) Los Angeles, California District Office. The applicant testified that he entered the United States in 1982 without inspection and admitted to numerous convictions including the two counts of assault with a deadly weapon not a firearm likely to produce great bodily harm.

On October 27, 2003, 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 district director erred in failing to consider the extreme hardship to the applicant's children and mother and focused solely on whether the applicant's spouse would suffer extreme hardship. Counsel contends that the applicant submitted sufficient evidence to demonstrate that his spouse, children and mother would suffer extreme hardship. Counsel also contends that, despite the applicant's two convictions for crimes of violence, he does not need to demonstrate exceptional and extremely unusual hardship because it exceeds the requirements of the Act. Counsel finally asserts that the applicant is eligible for a waiver based on his rehabilitation. *See Counsel's Brief*, dated June 29, 2005. In support of her contentions, counsel submits only the referenced brief. 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 . . .

*and*

- (2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status. [emphasis and italics added]

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 two counts of assault with a deadly weapon not a firearm likely to produce great

bodily harm, crimes involving moral turpitude. Counsel does not contest the district director's determination of inadmissibility. The AAO notes that counsel asserts that the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act based on both the convictions for two counts of assault with a deadly weapon not a firearm likely to produce great bodily harm and a conviction for theft of personal property. However, the record reflects that, while the applicant was arrested for theft of personal property and two counts of assault with a deadly weapon not a firearm likely to produce great bodily harm, he was only convicted of the two counts of assault.

The record reflects that Ms. [REDACTED] is a native of Mexico who became a lawful permanent resident in 1989 and a naturalized U.S. citizen in 1999. The applicant and Ms. [REDACTED] have a 16-year old daughter, a 15-year old daughter and a three-year old son, who are all U.S. citizens by birth. The applicant's mother is a native of Mexico who became a lawful permanent resident in 1990 and a naturalized U.S. citizen in 1997. The applicant has six adult siblings who are natives of Mexico who became lawful permanent residents and then naturalized U.S. citizens.

In addition to his 1988 convictions for assault, the record reflects that, on October 29, 1987, the applicant was convicted of driving under the influence in violation of 23152(a) of the California Vehicular Code (CVC). The applicant was sentenced to 3 years of probation. On March 20, 1989, the applicant was convicted of reckless driving under the influence in violation of section 23105.5 of the CVC and knowingly driving with a license suspended for reckless driving under the influence in violation of section 14601(a) of the CVC. The applicant was sentenced to 3 years of probation. On January 27, 1988 the applicant was sentenced to 24 months of diversion for felony possession of a controlled substance in violation of section 11350(A) of the CPC. On October 28, 1992, the applicant was convicted of driving a vehicle while having greater than 0.08 percent of alcohol in his blood in violation of section 23152(b) of the CVC and knowingly driving with a suspended license in violation of 14601.1(a) of the CVC. The applicant was sentenced to 3 years of probation and ten days in jail.

Counsel contends that the applicant is eligible for a waiver based on his rehabilitation. The AAO finds that the district director erred in basing his decision on section 212(h)(1)(B) of the Act and failed to consider the eligibility of the applicant for a waiver under section 212(h)(1)(A). The record reflects that the applicant has not been convicted of any crimes since his convictions for assault with a deadly weapon not a firearm likely to produce great bodily harm, driving under the influence and driving with a suspended license in 1987, 1988, 1989 and 1992. The record establishes that, since 1992, the applicant does not possess a criminal record in the United States. The record further establishes that the applicant has been rehabilitated and that the admission of the applicant to the United States would not be "contrary to the national welfare, safety, or security of the United States."

The record reflects that the applicant meets the requirements for a waiver of his grounds of inadmissibility under section 212(h)(1)(A) of the Act. However, the applicant must also warrant a favorable exercise of discretion. The unfavorable factors presented in the application are the applicant's convictions for assault with a deadly weapon not a firearm likely to produce great bodily harm, driving under the influence and driving with a suspended license in 1987, 1988, 1989 and 1992, and his original entry without inspection in 1982. The AAO finds that the applicant's two convictions for assault with a

deadly weapon not a firearm likely to produce great bodily harm are crimes involving violence. The term "crime of violence" is defined in 18 U.S.C. § 16 as:

- (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

Section 245(a)(1) of the CPC provides, in pertinent part:

- (a) (1) Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

Counsel asserts that the district director erred in finding the applicant had to demonstrate exceptional or unusual hardship due to his convictions for crimes involving violence because it requires a heightened standard from that required by the Act pursuant to section 212(h)(1) of the Act. However, 8 C.F.R. § 212.7(d) provides:

- (d) Criminal grounds of inadmissibility involving violent or dangerous crimes

The Attorney General, in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

While section 212(h)(1) of the Act 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, an applicant must also establish that they warrant a favorable exercise of discretion pursuant to section 212(h)(2) of the Act. The regulations clearly state the circumstances under which a favorable exercise of

discretion is warranted in the case of an applicant convicted of a crime of violence. The AAO finds that, in the instant case, no national security or foreign policy considerations are involved. Therefore, the applicant must demonstrate that the denial of the waiver would result in an exceptional or unusual hardship.

The concept of exceptional or unusual hardship is set forth by the Board of Immigration Appeals (BIA) in *Matter of Montreal*, 23 I&N Dec 56 (BIA 2001). In *Matter of Montreal*, the BIA found that many of the factors that are considered in assessing "extreme hardship" should be considered in evaluating "exceptional and extremely unusual hardship." The BIA held that the hardship suffered by the qualifying relative(s), however, must be "substantially beyond that which would ordinarily be expected to result from the alien's deportation," but need not show that such hardship would be "unconscionable." *Id.* at 59-63.

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 BIA 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).

Since an applicant's qualifying relative is not required to reside outside of the United States as a result of denial of the applicant's waiver request, an applicant must establish that the qualifying relative would suffer exceptional or unusual hardship whether they remained in the United States or accompanied the applicant to the foreign country of residence.

Since counsel did not assert whether the applicant's spouse, children and mother would suffer exceptional or unusual hardship, the AAO will adjudicate counsel's arguments in regard to extreme hardship in light of the standards set forth for exceptional or unusual hardship.

Counsel contends that separation of family is a strong factor in establishing extreme hardship and that Congress' intent in enacting the waiver provisions was to keep families together. In *Salcido-Salcido v. INS*, 138 F.3d 1292 (9<sup>th</sup> Cir. 1998), the Ninth Circuit Court of Appeals (the Ninth Circuit) held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[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." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir.

1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. However, in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the Ninth Circuit emphasized that the common results of removal are insufficient to prove extreme hardship. Therefore, while separation from family members may, in itself, constitute hardship, the hardship must still be beyond the common results of removal to constitute “extreme hardship.” It follows that, while separation from family members may, in itself, constitute exceptional or unusual hardship, the hardship must still be substantially beyond that which would ordinarily be expected to result from the alien’s removal.

On appeal, counsel asserts that the district director failed to consider the hardship to the applicant’s children and mother in determining whether extreme hardship to a qualifying relative was established. The AAO finds that the applicant’s children and mother are qualifying relatives pursuant to section 212(h) of the Act whose hardships should be considered in determining whether a qualifying relative would suffer extreme hardship or, in the instant case, exceptional or unusual hardship.

On appeal, counsel asserts that Ms. [REDACTED] and the applicant’s children would suffer extreme hardship if they remained in the United States without the applicant because the family will be broken apart. Counsel asserts that Ms. [REDACTED] affidavit was not given significant weight and the applicant’s children’s affidavits were not even considered. Counsel asserts that the applicant’s family is very close and they have never been separated. Counsel asserts that the applicant is extremely involved in his children’s lives and that even the thought of being separated from the applicant causes the applicant’s children to cry. Counsel asserts that Ms. [REDACTED] and the applicant’s children rely on the applicant both economically and emotionally.

Ms. [REDACTED], in her affidavit, states she would lose the man with whom she has shared so many years of her life and the children would lose a father that they love and respect. She states they would be affected psychologically and financially. She states that she and her daughters are currently affected by the possibility that the applicant may not be allowed to remain in the United States and asserts that the separation from the applicant would be very traumatic for them. Ms. [REDACTED] states that she is not currently working because their son is only five months old and she would be unable to support herself and the children without the applicant. She states that she has health problems such as gastritis and has gall bladder stones that will need to be removed with surgery. She states that she developed gestational diabetes during her pregnancy and is still trying to control it so that it does not develop into permanent diabetes. She states that without the moral support of the applicant she would be unable to care for herself and the children. The applicant’s oldest daughter, in her affidavit, states that her family is very close and will fall apart without the applicant. She states that she would suffer because she would not have the applicant’s presence for her plans, such as graduation, concerts and marching parades. The applicant’s youngest daughter, in her affidavit, states that she does not want the applicant to depart the United States because he teaches her a lot and takes her to a lot of places. She states that their family is very close.

Medical documentation indicates that, in April 2003, Ms. [REDACTED] was given insulin shots on two occasions and underwent an endoscopy of the pancreas in August 2003. The medical documentation does not support

Ms. [REDACTED] claim that she continues to suffer from diabetes. Neither does it indicate that she currently has gastritis or gallstones as the only notation on the medical form related to her endoscopy relates to a recommendation for a low fat diet. Accordingly, the record does not indicate that Ms. [REDACTED] currently suffers from any physical or mental illnesses, that her treatment requires the presence of the applicant, or that she is unable to receive appropriate medical treatment in the absence of the applicant.

Financial records indicate that, in 2002, Ms. [REDACTED] earned approximately \$15,350. While Ms. [REDACTED] asserts that she is now unemployed because she has a new-born, there is no evidence in the record to suggest that she would be unable to resume employment and generate income sufficient to support herself and her children. The record reflects that Ms. [REDACTED] has family members in the United States, such as the applicant's mother and siblings, who may be able to assist her physically and financially in the absence of the applicant. The record shows that, even without assistance from the applicant or other family members, Ms. [REDACTED] 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>. There is no evidence in the record to suggest that Ms. [REDACTED] is unable to perform work or daily activities due to a physical or mental illness. While it is unfortunate that Ms. [REDACTED] would essentially become a single parent and professional childcare may be an added expense and not equate to the care of a parent, these are hardships that commonly faced by aliens and families upon removal. The AAO acknowledges that Ms. [REDACTED] and her children may have to lower their 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, let alone an exceptional or unusual hardship, to Ms. [REDACTED] and the applicant's children if Ms. [REDACTED] had to support herself and the children without additional income from the applicant, even when combined with the emotional hardship described below.

The record fails to provide evidence that Ms. [REDACTED] or the applicant's children suffer from a physical or mental illness that would cause them to suffer emotional hardship beyond that commonly faced by aliens and families upon removal. While the AAO acknowledges Ms. [REDACTED] is concerned that the applicant's children would essentially be raised in a single-parent environment, this is a concern commonly felt by aliens and families upon removal. Additionally, while it is unfortunate that Ms. [REDACTED] and the applicant's children would experience distress and some level of depression as a result of their separation from the applicant, these emotional reactions are normal when families are separated by removal. Additionally, the record indicates that Ms. [REDACTED] and the applicant's children have family members, such as the applicant's mother and siblings, in the United States who may be able to assist them physically or emotionally in the absence of the applicant. Therefore, the record does not establish that Ms. [REDACTED] and the applicant's children would suffer extreme emotional hardship, let alone hardship substantially beyond that which would ordinarily be expected to result from an alien's removal.

On appeal, counsel asserts that the applicant's mother would suffer extreme hardship if she remained in the United States without the applicant. Counsel asserts that shared experience of fleeing an abusive spouse father, and resettling in the United States has made the applicant's family very close. Counsel asserts that, as the oldest son, the applicant took over many of the responsibilities of raising the other children. Counsel asserts that, because of the unique obstacles this family has faced, the applicant's mother is emotionally attached to the applicant. Counsel asserts that the applicant's mother suffers from many medical conditions, including diabetes, peripheral neuropathy and peptic ulcer. The applicant's mother, in her affidavit, states that the experience of fleeing her ex-husband and resettling in the United States has made her family all the more

united. She states that the applicant also took on the responsibility of being a father to the rest of her children, which is why separating her from the applicant would be devastating. She states that she has been permanently incapacitated since 1988 due to the herniation of two spinal discs, osteoarthritis, a hernia of the neck, injury to her arms and scoliosis. She states that her income is limited and the applicant helps her with the costs and maintenance of her automobile and helps her economically when possible.

Medical documentation indicates that the applicant's mother suffers from diabetes, arthritis, peptic ulcer, hypercholesterol, recurrent urinary tract infections, carpal tunnel, fungus of the feet, sinusitis and peripheral neuropathy. Her regular medications include Glipizide, glucophage, avandia, bextra and clarinex. A letter from the Social Security Administration (SSA) indicates that, in October 2000, the applicant's mother's individual disability payment was being changed. This documentation does not provide information in regard to the effect of the applicant's mother's conditions on her ability to perform daily activities, whether she requires long-term medical care or what the prognosis is for her conditions. The medical evidence does not indicate that the applicant's mother's treatment requires the presence of the applicant or that she would be unable to receive appropriate medical treatment in the absence of the applicant.

There is no evidence in the record that the applicant's mother is financially dependent upon the applicant or unable to support herself without the financial assistance of the applicant. Moreover, the record reflects that the applicant's mother has other family members in the United States, such as her other adult children, who may be able to provide her with financial and physical assistance in the absence of the applicant. The record does not contain evidence that the applicant's mother would suffer a financial loss that would result in extreme hardship, let alone exceptional or unusual hardship, to her if she had to support herself without any economic support the applicant may provide, even when combined with the emotional hardship discussed below.

Counsel, the applicant and his mother assert that the applicant's mother would suffer greater emotional hardship due to the family's shared experience of fleeing to the United States. However, there is no evidence in the record that demonstrates the applicant's mother suffers from a physical or mental illness that would cause her to suffer hardship beyond that commonly suffered by aliens and families upon removal, let alone hardship substantially beyond that which would ordinarily be expected to result from the alien's removal. Finally, the record reflects that the applicant's mother has other family members in the United States, such as her other adult children, who may be able to provide her with emotional or physical support in the absence of the applicant.

Counsel, the applicant and the applicant's mother do not assert that the applicant's mother would suffer extreme hardship if she were to accompany the applicant to Mexico. The AAO is, therefore, unable to find that the applicant's mother would experience hardship should she choose to join the applicant in Mexico.

On appeal, counsel asserts that Ms. [REDACTED] and the applicant's children would suffer extreme hardship if they accompanied the applicant to Mexico because they and the applicant do not have any family members remaining in Mexico. Counsel asserts Ms. [REDACTED] and the applicant's children would be faced with beginning life anew in a country in which Ms. [REDACTED] has not resided in over twenty years and a country in which the applicant's children have never resided. Counsel asserts that it would be extremely difficult for the family to settle in a country with such diminished opportunities as Mexico. Counsel asserts that the violence

against women and the treatment of women's rights would be a hardship Ms. [REDACTED] and her two daughters would suffer. Ms. [REDACTED] in her affidavit, states that she and the applicant's children have established their lives in the United States and the family would have no home or jobs in Mexico. She states that she and the applicant do not have any family in Mexico and they would have to start their lives from scratch. She states that she does not want her children to live in Mexico where there is so much poverty and crime. She states that her children are accustomed to life in the United States and have hopes and dreams they will only be able to accomplish in the United States. She states that her children's education and friendships are in the United States.

As discussed above, there is no evidence in the record to suggest that Ms. [REDACTED] or the applicant's children suffer from a physical or mental illness for which they would be unable to receive treatment in Mexico. Counsel states that, in 2000, the top percent of the population of Mexico received 37.8% of the total income while the bottom 20% earned an estimated 3.6%, but submits no evidence that demonstrates that Ms. [REDACTED] and the applicant would fall within either of these categories. There is no evidence in the record to establish what the characteristics of these populations are. Accordingly, the record does not demonstrate that Ms. [REDACTED] and the applicant would be unable to find *any* employment in Mexico, and economic detriment of some type is not unusual or extreme. *See Perez v. INS, Supra; Ramirez-Durazo v. INS, 794 F.2d 491, 498 (9th Cir.1986)*. The AAO acknowledges evidence of violence against women in Mexico. However, the evidence indicates that this violence is at the hands of the woman's family members and Ms. [REDACTED] has not claimed that she or the applicant's children would suffer any violence at the hands of the applicant or that there are other family members in Mexico who would pose a threat to her or her daughters. The AAO finds that when the hardships faced by Ms. [REDACTED] with regard to relocation to Mexico--adjusting to a new culture, economy, environment, separation from friends and family, an inability to pursue the same opportunities she would have in the United States or diminished constitutional rights to equal or fair treatment of women in the workplace--are combined with the children's adjustment to a new culture and environment, they would constitute extreme hardship. *Matter of Kao & Lin, 23 I&N Dec. 45 (BIA 2001)*. However, even this combination of hardship does not rise of the level of exceptional and unusual hardship. *Matter of Montreal, Supra* at 64-5; *Matter of Andazola, 23 I&N Dec. 319 (BIA 2002)*.

Additionally, the AAO notes, as previously indicated, that the applicant's spouse, children and mother, as U.S. citizens, are not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, the record does not demonstrate that Ms. [REDACTED] the applicant's children or the applicant's mother would experience exceptional and unusual 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, children and mother would face extreme hardship, let alone exceptional or unusual hardship, if the applicant were refused admission. Rather, the record demonstrates that Ms. [REDACTED] the applicant's children and his mother will face the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse, father or son 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 favorable exercise of discretion to cases

involving crimes of violence to those involving “*exceptional or unusual hardship*,” the Attorney General 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 substantially beyond that which would ordinarily be expected to result from the alien’s removal in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship, let alone exceptional or unusual hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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).

Since counsel and the applicant have not established that a qualifying relative would suffer extreme hardship, it follows that they have failed to establish that a qualifying relative would suffer the heightened standard of exceptional or unusual hardship. As such, the applicant does not warrant a favorable exercise of discretion.

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.