

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Room 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

tlz

PUBLIC COPY



FILE: [redacted] Office: HARLINGEN DISTRICT OFFICE Date: AUG 20 2007

IN RE: [redacted]

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 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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant, a citizen of Mexico, was found inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a crime involving a controlled substance. The applicant is the father of two United States citizen children, and the son of lawful permanent residents of the United States and 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 parents.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on his children and parents, the qualifying relatives, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant contends that his parents would suffer extreme hardship if he is required to return to Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A)(i)(II) of the Act provides, 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 —
 -
 - (II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

- (h) The Attorney General [now the Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) or subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if—
 - (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 [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 the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. If extreme hardship is established, CIS must then assess whether to exercise discretion and grant the waiver request.

Regarding the applicant's grounds of inadmissibility, the record establishes that he was arrested and convicted of the possession of five grams of marijuana in 2004. The applicant is, therefore, inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act for having violated the law of a State (Iowa, in this case) relating to a controlled substance. The applicant does not contest the District Director's finding of inadmissibility. Rather, he is filing for a waiver of inadmissibility.

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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

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 pursuant to section 212(i) of the Act. 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 held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

The record reflects that the applicant's son is a six-year-old citizen of the United States, and his daughter is a two-year-old citizen of the United States. His father is a fifty-six-year-old lawful permanent resident of the United States, and his mother is a fifty-year-old lawful permanent resident of the United States.

On appeal, the applicant's representatives contend that the applicant qualifies for a waiver of inadmissibility. The applicant's representatives contend that the applicant's son has developmental

delays, static encephalopathy of prenatal origin, a sleep disorder, hearing loss, and mild to moderate retardation. They also contend that the applicant's mother suffers from high blood pressure, hypertension, and depression, and that the applicant's father suffers from an enlarged prostate.

The AAO has carefully reviewed and considered each of the letters, affidavits, medical records and reports, and other documents contained in the record in reaching its decision, and takes particular note of the records from the medical and educational service providers treating the applicant's son. The AAO notes that the applicant's son has well-established relationships with his medical service providers.

In two letters dated March 24, 2005, [REDACTED] and [REDACTED], confirm that the applicant's son is an established patient, and that is being treated for hyperactivity, developmental delay, sleep problems, static encephalopathy, and mild to moderate retardation. They state the following:

The patient requires a regimen of continued treatment which is provided in our clinic. For this reason, it would be in the child's best interest to remain in this country.

The record also contains information from the Social Security Administration, which has classified the applicant's son as a disabled child.

The AAO has also reviewed the applicant's son's Individual Education Program (IEP) and accompanying documents. Although the applicant's son's IEP for the 2005-2006 school year indicates that he will receive the majority of his instruction in a mainstream classroom, he requires several levels of support in order to maintain this placement. For example, he was to receive speech therapy outside the mainstream classroom, as well as special instruction from an itinerant special education teacher at least once per week. Several accommodations within the mainstream classroom will also be made in order to support his presence in the classroom.

The record also contains extensive documentation regarding the various types of treatment the applicant's son has received regarding his various medical conditions.

No evidence was submitted to establish that the applicant's daughter would suffer extreme hardship as a result of the applicant's inadmissibility.

Regarding hardship to the applicant's parents, the record contains a letter from the applicant's parents, dated March 28, 2005. The applicant's parents state that they need the applicant in the United States because he is the only person that can help them work; that the applicant's mother has high blood pressure, is depressed, and is taking pills for her condition. The record contains a letter from the applicant's physician stating that she is being treated for hypertension, as well as letters from the applicant's father's physician.¹

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does

¹ The letters regarding the applicant's father's medical condition are in the Spanish language and are not accompanied by certified English translations. Accordingly, they will be accorded no weight in this proceeding. See 8 C.F.R. § 103.2(b)(3). Moreover, the AAO notes that these documents are from a physician in Mexico. It is unclear to the AAO how, if he is already living in Mexico, the applicant's father would experience extreme hardship if the applicant were removed to Mexico.

not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding of extreme hardship in this case. The AAO finds that the applicant's United States citizen son would face extreme hardship if he were to relocate to Mexico with the applicant. First, the AAO accepts the proposition that the applicant's son would not be able to receive the same level of services (speech therapy, classroom pull-out sessions, etc.) through the Mexican public education system that he presently receives through the Pharr-San Juan-Alamo Independent School District. Moreover, the AAO notes that the applicant's son has resided in the United States since birth, and the record indicates that he is integrated into the United States lifestyle and education system. In *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001), the BIA found that a fifteen-year-old child who had lived her entire life in the United States, was completely integrated into the American lifestyle, and was not fluent in the Chinese language, would suffer extreme hardship if she relocated to Taiwan. The AAO finds that a similar fact pattern has been established in this case.

However, the applicant has not established that his son would face hardship if he were to remain in the United States without the applicant. The applicant has not demonstrated that his son's condition would worsen if the applicant were to depart the United States, or even addressed such a scenario. Nor has the applicant submitted any information regarding his son's mother, such as her status in the United States (and attendant likelihood of remaining in the United States herself), or her ability to care for the applicant's son in the absence of the applicant. As such, the AAO is unable to enter a finding that the applicant's son would experience extreme hardship if the applicant were to return to Mexico and leave his son in the care of the child's mother.

Nor has the applicant established extreme hardship to his daughter, or even addressed the issue.

Finally, the AAO finds that the applicant has failed to establish that his parents would experience extreme hardship if he were deported to Mexico. Particularly if they remain in the United States, the record demonstrates that they face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever an adult child is removed from the United States or refused admission. They have not demonstrated that their medical conditions would be adversely impacted in the absence of the applicant in any way, or that they depend upon him for their day-to-day functioning. Although CIS is not insensitive to their situation, the financial strain of visiting the applicant in Mexico and the emotional hardship of separation are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law. Nor have the applicant's parents established that they would face extreme hardship if they joined the applicant in Mexico, as the record fails to demonstrate that they would face hardship beyond that normally faced by others in their situation.

In limiting the availability of the waiver to cases of “extreme hardship,” Congress provided that a waiver is not available in every case where a qualifying family relationship exists.

In limiting the availability of the waiver to cases of “extreme hardship,” Congress specifically provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States 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 finds that the District Director properly denied this waiver application. In adjudicating this appeal, the AAO finds that the record fails to demonstrate that the applicant’s children or parents would suffer hardship beyond that normally expected upon the removal or refusal of entry of a spouse.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to demonstrate that his United States citizen children or lawful permanent resident children would suffer hardship that is unusual or beyond that normally expected upon removal of a spouse. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. “Extreme hardship” has been defined as 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 the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained not that burden. Accordingly, the AAO will not disturb the director’s denial of the waiver application.

ORDER: The appeal is dismissed. The waiver application is denied.