



U.S. Citizenship
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[Redacted]

FILE:

[Redacted]

Office: PHOENIX, AZ

Date: MAR 12 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 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Phoenix, Arizona, 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 and father of U.S. citizens. 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 May 13, 2005.

The record reflects that, on November 9, 1992, the applicant was convicted 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 36 months of probation and 270 days in jail. The acts constituting the criminal conviction were committed on June 28, 1992.

On April 19, 2005, 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 abused his discretion by failing to consider all the enumerated factors regarding extreme hardship to the applicant's wife and child. *See Form I-290B*, dated June 10, 2005. The Form I-290B indicated that counsel would submit a separate brief or evidence on appeal within the time allotted. On January 10, 2007, the AAO informed counsel that she had five days in which to resubmit the documentation she had indicated she would provide in support of the appeal. Counsel did not forward a brief and/or additional evidence to support the appeal. Accordingly, the record is complete. The entire record was reviewed and considered in rendering a decision in this case.

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.
- (ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-
 -
 - (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did

not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

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 –
.....

(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 conviction for assault with a deadly weapon with force likely to cause great bodily injury, a crime involving moral turpitude. Counsel does not contest the district director's finding of inadmissibility.

Counsel asserts that the applicant's offense was committed more than 12 years ago and the applicant has since been a model citizen. However, the crime involving moral turpitude for which the applicant was found inadmissible occurred less than 15 years prior to the applicant's application for an immigrant visa or the date of this decision. Therefore, the AAO finds the applicant is statutorily ineligible to apply for a waiver under section 212(h)(1)(A) since he does not meet the requirement that the activities for which he is inadmissible occurred more than 15 years prior to his visa application. Instead, he must satisfy the requirement at section 212(h)(1)(B) of the Act, establishing that his removal would result in extreme hardship to his U.S. citizen spouse or child. Hardship to the applicant is not a permissible consideration under the statute.

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).

S neither [REDACTED] or her son is required to live outside the United States if the applicant’s waiver request is denied, extreme hardship must be established whether they reside in the United States or in Mexico.

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 February 17, 1995, the applicant married his spouse, [REDACTED]. [REDACTED] is a U.S. citizen by birth. The applicant and [REDACTED] have an eleven-year old son who is a U.S. citizen by birth. The record indicates that the applicant is in his 30’s, [REDACTED] is in her 20’s, and Ms. [REDACTED] and her son may have some health concerns.

[REDACTED], in her affidavit, asserts that she and her child will suffer extreme hardship if they remain in the United States without the applicant because she has been living in fear of having her family separated. She states that she has been very sad, frustrated, upset, stressed, disappointed and that she has been unable to sleep. She states that, due to the stress, she has developed an eating disorder and gained over sixty pounds in the past five years. She states that she currently takes Phentermine for her weight issues and is on Ambien to help with her insomnia. She states that her doctor has informed her that her weight and sleep problems are caused by stress and depression. She states that she would be lost without the applicant. She states that the applicant is the primary source of income for the family and that they would lose everything they have worked so hard together to achieve, from their home to their family bond. She states that her son has never experienced life without the applicant and it would be a struggle to balance time, transportation and support of her son’s education without the applicant. Finally she states that she would have to raise her child alone, which would be a crime.

A psychological report diagnoses [REDACTED] with generalized anxiety disorder and dependent personality disorder as a result of her fear of having to leave the United States or suffering separation from the applicant.

The psychological report states that [REDACTED]'s depressive trends will be exacerbated by the removal of the applicant. The psychological report states that [REDACTED] is deathly afraid of being separated from the applicant and fears she would be unable to manage on her own. It states that she suffers from hives, for which she is prescribed Benadryl and Claritin, insomnia, for which she is prescribed Ambien, and suffers from great body-image shame due to a 70 pound increase in weight. The psychological report states that [REDACTED] in March 2004, was fired from her job for poor work performance because she was unable to offer customers solutions to their problems. The psychological report indicates that [REDACTED]'s inability to respond to customer's needs was a result of a shock state related to trauma. The psychological report diagnoses the applicant's child with separation anxiety disorder that will be exacerbated by the removal of the applicant and result in full-blown childhood depression and despair. The psychological report states that the applicant's child has a secure attachment to both his father and "the family as a whole intact family." It states that the child is fearful of being alone and separation from the applicant would result in the most dire and grave consequences. The psychological report indicates that the applicant's child suffers from hives for which he takes Benadryl. The psychological report concludes that the emotional interests of [REDACTED] and her child can be best served only if the applicant is permitted to remain in the United States.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on a single interview between the applicant's spouse and child and the psychologist who conducted the evaluation. Accordingly, it does not reflect the insight and detailed analysis commensurate with an established relationship with a mental health professional, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Moreover, the record does not contain any evidence that [REDACTED] or the applicant's child have received psychological treatment or evaluation other than during the appointment on which the submitted psychological report is based. Neither does it offer proof that [REDACTED], or her child, continue to require or receive treatment based on the report's diagnoses. Accordingly, the evaluation will be given little evidentiary weight.

A letter from the Family Medical Centers indicates that [REDACTED] has been a patient since August 2000. It states that [REDACTED] has problems with binge eating and stress eating for which she has been placed on medication in the past and is currently on Phentermine. The letter indicates that [REDACTED]'s weight has fluctuated from 216 to 228 pounds. The medical letter states that she was recently prescribed Ambien for stress related insomnia and that they will continue to monitor her weight and medication use. While the medical documentation indicates that the applicant needs to monitor her weight and medication usage, the documentation does not indicate whether she requires long-term medical care, what the prognosis is for her condition, that her treatment requires the presence of the applicant or that she would be unable to receive appropriate medical treatment in the absence of the applicant.

Financial records indicate that, in 2001, [REDACTED] earned approximately \$20,236. The record reflects that [REDACTED] has family members in the United States, such as her parents and a sibling, 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, [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>. As discussed above, there is insufficient evidence in the record to establish that [REDACTED] would be unable to perform work duties or daily activities due to a

physical or mental illness. While the AAO notes that the psychological evaluation indicates that [REDACTED] on March 21, 2004, lost her job as a result of poor performance, the record does not document her loss of employment nor does it offer proof that she would be unable to find other full-time employment sufficient to support herself and her child without the financial support of the applicant. Further, although it is unfortunate that [REDACTED] would essentially become a single parent and professional childcare may be an added expense and not equate to the care of a parent, this is also not a hardship that is beyond those commonly suffered by aliens and families upon removal. The record does not support a finding of financial loss that would result in an extreme hardship to [REDACTED] and her child if [REDACTED] had to support herself and her child without additional income from the applicant, even when combined with the emotional hardship described below.

In her brief, submitted in support of the waiver application, counsel asserts that if the applicant were returned to Mexico, [REDACTED] would lose everything for which she and her husband have worked, including their home. While the AAO acknowledges that [REDACTED] would have to lower her standard of living, there is no evidence in the record to support counsel's claim. The AAO notes that counsel, in making her assertions, references the statement made by [REDACTED]. However, the statements of counsel as to matters of which they have no personal knowledge are not evidence. *Matter of Obaigbena*, 19 I&N Dec. 3042 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 2820 (BIA 1980).

As discussed above, there is insufficient evidence that [REDACTED] or the applicant's child suffer from a physical or mental illness that would cause them to suffer hardship beyond that commonly faced by aliens and families upon removal. While the AAO acknowledges [REDACTED]'s concerns that her child will essentially be raised in a single-parent environment, this is not a hardship that is beyond those commonly suffered by aliens and families upon removal. Additionally, while it is unfortunate that [REDACTED] and the applicant's child would experience distress and some level of depression as a result of separation from the applicant, this is also not a hardship that is beyond those commonly suffered by aliens and families upon removal. Finally, the record indicates that [REDACTED] has family members, such as her parents and an adult sibling, in the United States who may be able to assist her physically or emotionally in the absence of the applicant.

[REDACTED], in her affidavit, asserts that she and the applicant's child will suffer extreme hardship if they were to accompany the applicant to Mexico because she needs to be in the United States to care for her father, who is very ill with diabetes, prostate cancer, high blood pressure, heart problems, back problems and more. She states that, if the applicant is removed from the United States, she would be forced to choose between him and her father. She states that her family belongs in the United States and that lack of work opportunities would cause an extreme change in the family's life style. She states that both she and her son have never experienced life without her father. She states that the education system in Mexico does not compare to the United States. She states that both she and her son would have to adapt to a new environment, customs and would not have the luxuries that they have in the United States.

As discussed above, there is no evidence in the record to suggest that [REDACTED] or the applicant's child suffer from a physical or mental illness for which they would be unable to receive treatment in Mexico. There is no evidence in the record to confirm that [REDACTED] father is financially dependent upon the applicant and [REDACTED] or is unable to support himself without the financial assistance of the applicant or [REDACTED]. While the applicant asserts that she has assumed the responsibility of caring for her father even though one of

her sisters lives only thirty minutes away from his home, there is no evidence in the record to suggest that the [REDACTED] sibling would be unable to provide [REDACTED]'s father with financial, physical and emotional assistance in the absence of the applicant and [REDACTED]. Additionally, the record reflects that [REDACTED] mother resides in the United States and may also be able to provide financial, physical and emotional support to [REDACTED]'s father. There is no evidence in the record to confirm that [REDACTED]'s father suffers from a mental or physical illness that would cause [REDACTED] or her child hardship beyond that commonly suffered by aliens and families upon removal. There is no evidence in the record to suggest that the applicant and Ms. [REDACTED] would be unable to find *any* employment in Mexico. While the hardships faced by [REDACTED] with regard to adjusting to a new culture, economy, environment, separation from friends and family and an inability to pursue the same opportunities she would have in the United States are what would normally be expected with any spouse accompanying a removed alien to a foreign country, when combined with the applicant's child's adjustment to a new culture and environment they would rise to level of extreme hardship. *Matter of Kao & Lin*, 23 I&N Dec. 45 (BIA 2001). However, the AAO notes that, as previously noted, the applicant's spouse and child, 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, [REDACTED] and the applicant's child 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 and child would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] and the applicant's child will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse or father 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 and child 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.