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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED] Office: DES MOINES Date: **AUG 20 2008**

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Des Moines, Iowa, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Belize 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 committed crimes involving moral turpitude. The applicant is the beneficia of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse, [REDACTED]. The applicant 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 U.S. citizen son.

The applicant was last admitted to the United States in F-1 student status on January 15, 2002. The applicant and his spouse were married in the United States on January 8, 2000. The Form I-130 petition, filed on July 9, 2002, was approved on March 26, 2008. The applicant filed the Application to Register Permanent Residence or Adjust Status (Form I-485) on July 9, 2002. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) on March 26, 2008.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of Field Office Director Denying Application for Waiver of Grounds of Inadmissibility*, dated June 13, 2008.

On appeal, counsel asserts that the field office director applied an erroneous legal standard in adjudicating the waiver application. *Legal Memorandum in Support of I-290B* at 1. Counsel contends that the field office director applied the “extraordinary and extremely unusual hardship” standard required for cancellation of removal under section 240A of the Act, rather than the “extreme hardship” standard relevant to waiver of inadmissibility under section 212(h). *Id.* at 2. Counsel states that the applicant has previously submitted substantial evidence of extreme hardship to his U.S. citizen spouse and child, and asserts that the field office director “simply failed to review this very substantial evidence.” *Id.* Counsel also contends that the field office director improperly disregarded the “summation of legal arguments and pertinent facts, as well as precedent cases and related items” presented by counsel. *Id.* at 3.

The record contains, among other documents, an affidavit from the applicant’s spouse, a note from the applicant’s son, a letter from his pediatrician, and affidavits from relatives and acquaintances. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (i) In general.— . . .[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.

The record shows that the applicant was convicted on August 15, 2003 in Iowa District Court in and for Johnson County of Sexual Abuse in the Third Degree in violation of section 709.4 of the Iowa Criminal Code

(I.C.C.) and sentenced to a term of imprisonment not to exceed ten years. The applicant was also convicted of Indecent Exposure in violation of I.C.C. § 709.9 and sentenced to a term of imprisonment of 30 days.

Section 709.4 of the I.C.C. provides:

A person commits sexual abuse in the third degree when the person performs a sex act under any of the following circumstances:

1. The act is done by force or against the will of the other person, whether or not the other person is the person's spouse or is cohabiting with the person.
2. The act is between persons who are not at the time cohabiting as husband and wife and if any of the following are true:
  - a. The other person is suffering from a mental defect or incapacity which precludes giving consent.
  - b. The other person is twelve or thirteen years of age.
  - c. The other person is fourteen or fifteen years of age and any of the following are true:
    - (1) The person is a member of the same household as the other person.
    - (2) The person is related to the other person by blood or affinity to the fourth degree.
    - (3) The person is in a position of authority over the other person and uses that authority to coerce the other person to submit.
    - (4) The person is four or more years older than the other person.
3. The act is performed while the other person is under the influence of a controlled substance, which may include but is not limited to flunitrazepam, and all of the following are true:
  - a. The controlled substance, which may include but is not limited to flunitrazepam, prevents the other person from consenting to the act.
  - b. The person performing the act knows or reasonably should have known that the other person was under the influence of the controlled substance, which may include but is not limited to flunitrazepam.
4. The act is performed while the other person is mentally incapacitated, physically incapacitated, or physically helpless.

Sexual assault or abuse is generally considered a crime involving moral turpitude. *See Matter of B-*, 5 I&N 538 (BIA 1953); *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996) (alien convicted of sexual assault of 13 year old girl); *accord Nguyen v. ICE*, 400 F.3d 255 (5<sup>th</sup> Cir. 2005)(sexual assault of a child). The

applicant has not disputed that he is inadmissible under section 212(a)(2)(A) of the Act for having committed sexual abuse, a crime involving moral turpitude.

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), (B), . . . of subsection (a)(2) . . . if—

. . . .

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

The AAO notes that section 212(h) of the Act provide that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the relatives that qualify are the applicant's spouse and son. Hardship to the applicant himself is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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).

The AAO notes that in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998), the Ninth Circuit Court of Appeals held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[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." (Citations omitted.) Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes further, however, that U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 1996), the Court defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court 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.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

In her affidavit, the applicant’s spouse indicates that she has not lived with the applicant, who is currently detained, since his incarceration in 2003. She states that she has had to be both a “mother and a father” to their son, who “cannot even remember what it was like to have two parents at home.” The applicant’s spouse states that though she has been employed as an adjunct professor at a community college, the number of classes she teaches and the income she receives fluctuates and she is not eligible for healthcare benefits. She indicates that she has applied for full-time positions, but is unlikely to be hired in a full-time position without further education. She asserts that, as the sole provider for her son, she has neither the time nor the means to continue her education. The applicant’s spouse also states that her health has declined since the applicant’s incarceration, that she suffers from migraine headaches and depression but is unable to afford adequate medical care for herself or her son. She fears that her health and the health of her son will continue to decline. She states that Belize lacks affordable quality healthcare and that she believes her situation will not be much better if she relocates there. The applicant’s spouse also indicates that she owes her and the applicant’s family money that she borrowed to pay for the applicant’s criminal defense.

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 wife and son face extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO recognizes that the applicant’s spouse has suffered emotionally as a result of the applicant’s conviction and incarceration, and that she may continue to suffer if she chooses to remain in the United States and the applicant is removed to Belize. However, the applicant has failed to demonstrate that the emotional hardship of separation, when combined with other hardship factors, rises to the level of extreme hardship. The AAO acknowledges the hardship experienced by the applicant’s spouse because her employer does not offer her health insurance, but there is no evidence demonstrating that this hardship will increase if the waiver application is denied, or be ameliorated if it is approved. The applicant’s employment prospects in the United States are uncertain and likely diminished as a consequence of his felony conviction. The record shows that the applicant’s spouse has been financially independent since the applicant was convicted and incarcerated, and her current circumstances do not rise to the level of extreme hardship. She has not submitted any medical

documentation to substantiate her claim to be suffering from migraine headaches and depression, or demonstrating that she will no longer experience these conditions if the waiver application is approved. Furthermore, the applicant's spouse has indicated that their son does not have a strong "connection" to the applicant, as the applicant has been incarcerated for most of his son's life. The AAO acknowledges the evidence, in particular the letter from [REDACTED] showing that children benefit "from a two parent home." However, given the circumstances of this case, it has not been demonstrated that the applicant's son would suffer extreme hardship if the waiver application is denied and the applicant removed. The hardship described by the applicant's spouse is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation.

The applicant has also failed to demonstrate that his spouse and child would suffer extreme hardship if they relocated to Belize. The AAO recognizes that the applicant has no family ties in Belize. However, though the applicant's spouse and other affiants have made general statements concerning conditions in Belize, no documentary evidence has been submitted to substantiate their assertions. Although the statements are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of 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. 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 application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.