U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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JUL 29 2008

FILE: [redacted] Office: DENVER, COLORADO Date:

IN RE: Applicant: [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: SELF-REPRESENTED

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 waiver application was denied by the Interim District Director, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who initially entered the United States without inspection in January 1999. On April 20, 2001, the applicant's United States citizen wife filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On April 30, 2002, a county judge in El Paso/Teller County, Colorado, convicted the applicant of third degree Assault/Domestic Violence, and sentenced him to 120 days imprisonment and twenty-four (24) months probation. On November 8, 2002, the applicant filed an Application for Waiver of Grounds of Excludability (Form I-601). On September 10, 2004, the applicant's Form I-485 was denied for abandonment. On October 19, 2004, the applicant's Form I-130 was denied for abandonment. On April 25, 2003, the Interim District Director denied the Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relative. On May 14, 2003, the applicant filed an appeal of the Interim District Director's decision on his Form I-601. On appeal, the applicant's wife states she will suffer financial hardship if the applicant is removed from the United States. *See letter attached to Form I-290B,* filed May 14, 2003.

The AAO finds that since the applicant's Form I-130 and Form I-485 were denied for abandonment and not reopened, there is no underlying petition to support the applicant's Form I-601; therefore, the Field Office Director properly denied the applicant's Form I-601. The AAO notes that the applicant's spouse may now, if she chooses to do so, file a new Form I-130 on the applicant's behalf.

ORDER: The appeal is dismissed.