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U.S. Citizenship
and Immigration
Services

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FILE:

Office: PHOENIX, ARIZONA

Date:

MAY 06 2008

IN RE:

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:

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 District Director, Phoenix, Arizona, and 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 committed crimes involving moral turpitude; and section 212(a)(2)(B) of the Act, 8 U.S.C. § 1182(a)(2)(B), for having multiple criminal convictions for which the aggregate sentences to confinement were five years or more. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his lawful permanent resident mother, [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 mother.

The I-130 petition was approved on February 21, 1992. The applicant filed the present Application to Register Permanent Residence or Adjust Status (Form I-485) on May 21, 2004. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) on March 28, 2006.

The District 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 District Director*, dated April 12, 2006.

On appeal, counsel asserts that USCIS abused its discretion by issuing a decision before all the evidence was submitted. Counsel submits a letter from [REDACTED] dated April 11, 2006; a letter from the applicant; a copy of the death certificate of the applicant's father; and information concerning the applicant's co-defendant in his most recent criminal case, now an escaped fugitive.

In addition to these documents, the evidence presented by the applicant in support of his waiver application consists of letters from [REDACTED] dated April 7, 2003 and June 7, 2002; letters from the applicant's mother; a letter from the applicant's sister [REDACTED] dated March 16, 2006; a letter from the applicant's brother [REDACTED] dated March 19, 2006; an undated letter from [REDACTED]' wife; a letter from one of the applicant's neighbors, [REDACTED], dated February 27, 2001; and newspaper articles concerning economic and other conditions in Mexico. In addition the record also contains documents submitted in support of the applicant's application for adjustment of status, namely, financial, tax and employment documents for the applicant, the applicant's mother and his late father, and the applicant's sister [REDACTED] and her husband. 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.

Section 212(a)(2)(B) of the Act states:

Multiple criminal convictions.—Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

Court documents in the record reflect that the applicant was convicted on August 19, 2005 in Arizona Superior Court, Maricopa County, of Attempted Armed Robbery (a class 3 felony) in violation of sections 13-1001 and 13-1804 of the Arizona Revised Statutes (A.R.S.) and sentenced to 11 years incarceration. The applicant was also convicted of Aggravated Assault (a class 3 felony) in violation of A.R.S. §§ 13-1204 and sentenced to four years of probation. The applicant's jail sentence was suspended (the applicant was incarcerated for 482 days prior to sentencing).

The applicant was also convicted on October 15, 1996 in Arizona Superior Court, Graham County, of Theft (a class 6 felony) in violation of A.R.S. § 13-1802. The applicant was sentenced to three years of probation and 180 days incarceration. On June 28, 1999, the applicant was found to have violated the terms and conditions of his probation and sentenced to 256 days in jail.

Robbery and theft offenses, including attempted armed robbery, are generally considered crimes involving moral turpitude. *See Matter of Carballe*, 19 I. & N. Dec. 357 (BIA 1986); *see also Matter of Martin*, 18 I. & N. Dec. 226 (BIA 1982); *Matter of Garcia*, 11 I. & N. Dec. 521 (BIA 1966); *Chen v. INS*, 87 F.3d 5 (1st Cir. 1996). Similarly, though simple assault is not always considered a crime involving moral turpitude, aggravated assault is generally considered a crime involving moral turpitude. *See Matter of Chavez-Calderon*, 20 I. & N. Dec 744 (BIA 1993); *Matter of Medina*, 15 I. & N. Dec. 611 (BIA 1976). Counsel has not disputed that the applicant's crimes are crimes involving moral turpitude or that the applicant is inadmissible under sections 212(a)(2)(A) and 212(a)(2)(B) of the Act.

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 only relative that qualifies is the applicant's mother. 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 (9th 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 (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 Ninth Circuit Court of Appeals 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. 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.

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 mother faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO recognizes that the applicant's mother would suffer emotionally as a result of separation from the applicant if she chooses to remain in the United States. [REDACTED] has indicated in her letters that the applicant's mother suffers from generalized anxiety disorder and dependent personality disorder, conditions that [REDACTED] claims would be exacerbated, possibly to point of a nervous breakdown, if the applicant's mother is separated from the applicant because of his departure or removal from the United States. However, it is noted that [REDACTED] also attributes the applicant's mother's conditions to the death of her husband and to her "inability to predict the outcome of the situation with her son." Also, as was observed by in the District Director's decision, the applicant's mother has been separated from the applicant throughout his recent incarceration. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letters from [REDACTED] are brief and appear to be based on only two interviews between the applicant's mother and the psychologist. Although these interviews occurred approximately one year apart, the record fails to reflect a significant ongoing relationship between a mental health professional and the applicant's spouse or a significant history of treatment for the generalized anxiety order suffered by the applicant's mother. Moreover, the conclusions reached in the submitted letters, being based on only two interviews, do not reflect the insight and elaboration commensurate with an established, regular relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing her evaluation's value to a determination of extreme hardship.

The economic impact of the applicant's removal on his mother cannot be ascertained from the evidence in the record. The only evidence of the applicant's finances is a 2000 tax return showing wages totaling less than \$6500. In one of her letters, the applicant's mother states that the applicant has supported her economically, but provides no additional details concerning the amount of this support, her economic circumstances or the extent to which she is dependent on the applicant's support. The applicant's brother also states that the applicant provided financial support for the family prior to their father's death, but does not provide any details concerning this support. [REDACTED] indicates in her letter dated April 7, 2003 that the applicant's mother's "inability to concentrate due to anxiety . . . relates to her work problems" but does not provide further explanation. Although these 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)).

The AAO acknowledges the predominant weight given to separation as hardship factor by the Ninth Circuit Court of Appeals, but notes that the court in both *Salcido-Salcido* and *Cerrillo-Perez* considered the hardship of separating parents from minor dependent children, not the hardship involved in separating an adult child from a non-dependent parent. It is noted that the applicant's mother has other adult children living in the United States from whom she would not be separated. The circumstances of the applicant and his mother are typical of individuals separated as a result of removal or inadmissibility and do not rise to the level of extreme

hardship based on the record. U.S. court decisions, including decisions of the Ninth Circuit Court of Appeals, 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 AAO recognizes that the applicant's mother would experience some hardship if she returned to Mexico after having resided in the United States for many years, but there is insufficient evidence showing that this hardship would rise to the level of extreme hardship rather than the common hardship associated with relocation. The record reflects that the applicant's mother is a native and citizen of Mexico. The AAO has considered the evidence submitted by counsel depicting the poor living conditions experienced by many in Mexico, but notes the absence of specific evidence demonstrating the circumstances the applicant's mother would face in Mexico if she decided to relocate there. The applicant's brother indicates in his letter that "all of the family is here," but there is insufficient evidence concerning extended family ties and support the applicant's mother may have in Mexico, her native country.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, 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 her lawful permanent resident mother as required under section 212(i) and 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.