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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: HARLINGEN, TX Date: SEP 12 2008

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Inadmissibility Pursuant to Section 212(h) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF PETITIONER:

[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, Harlingen, Texas 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. The applicant was convicted of theft of property in 1999. He is inadmissible to the United States under 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), as an alien convicted of a crime involving moral turpitude.¹ The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on his behalf by his U.S. citizen spouse. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may adjust his status to lawful permanent resident of the United States.

The district director determined that the applicant is inadmissible to the United States pursuant to section 212(a)(8)(A) of the Act, 8 U.S.C. § 1182(a)(8)(A), as an alien ineligible for citizenship, for which there is no waiver available.

On appeal, the applicant, through counsel, maintains that he is not inadmissible pursuant to section 212(a)(8)(A) of the Act, 8 U.S.C. § 1182(a)(8)(A), because that section only applies to individuals barred from naturalization as a result of military service evasion. *See Brief in Support of Appeal*. The applicant admits that he is an aggravated felon, and inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), as an alien convicted of a crime involving moral turpitude. *Id.* The applicant, however, claims to be eligible to apply for waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1181(h). *Id.* Counsel cites to *Matter of Kanga*, 22 I&N Dec. 1206 (BIA 2000) and *Matter of Mitchell*, 21 I&N Dec. 1101 (BIA 1998). *Id.*

The AAO finds that the applicant is not inadmissible as an alien ineligible for citizenship because section 212(a)(8)(A) of the Act refers only to ineligibility for citizenship due to military service evasion. *See Matter of Kanga, supra*. The AAO finds the applicant to be inadmissible under section 212(a)(2)(A)(I) of the Act, 8 U.S.C. § 1181(a)(2)(A)(I). The AAO further finds that the applicant is eligible to apply for a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h). *See Matter of Mitchell, supra*. The question remains whether the applicant has established that his inadmissibility would result in extreme hardship to his U.S. citizen spouse. The AAO finds that he has not.

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

- (h) The [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

¹ Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), 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.

(1) (A) in the case of any immigrant it is established to the satisfaction of the [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 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).

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 would face extreme hardship if the waiver application is denied. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is refused admission or removed from the United States. Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of “extreme hardship,” Congress did not intend that a waiver be

granted in every case where a qualifying relationship exists. 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). 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).

In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant's spouse rises to the level of extreme. The AAO notes that the applicant's spouse has "bilateral profound sensorineural hearing loss," that she is unable to hear "[w]ithout her hearing aids," and that she communicates by "speech reading and sign language." *See* Audiologist Letter, dated October 6, 2006. The applicant's spouse indicates in her sworn affidavit that she could not relocate to Mexico because, in relevant part, the unavailability of accommodations for the hearing impaired. The applicant's spouse also cites to possible financial difficulties, and to her family ties in the United States. Other than the audiologist's letter, no documentation was submitted to support any claim of hardship the applicant's spouse would experience if the applicant were removed. The applicant, in his sworn affidavit, indicates that he suffers from schizophrenia and depression. The applicant further indicates that he is being treated with medications and counseling, but that he remains unemployed and supported financially by his parents.

Having considered the relevant factors, individually and in the aggregate, the AAO finds that the applicant has failed to establish that his spouse would face extreme hardship should she remain in the United States. The record suggests that the applicant's spouse may experience extreme hardship should she relocate to Mexico, but the AAO notes that the applicant has failed to provide any documentation regarding the availability of accommodations for the hearing impaired in Mexico, or any information regarding family or community ties, or possible employment, in Mexico. The AAO notes further that, as a U.S. citizen, the applicant's spouse is not required to relocate and, as noted above, the record does not establish that the difficulties she would face should she remain in the United States without the applicant do not rise to the level of "extreme." While the AAO has carefully considered the emotional impact of separation from the applicant resulting from his inadmissibility, a waiver is nevertheless not to be granted in every case where possible separation from a spouse is at issue. *See Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that "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.")

The AAO concludes that the hardship to the applicant's spouse caused by denial of the waiver is typical for any person in her circumstances and does not rise to the level of "extreme" as required by the statute. The AAO therefore finds that the applicant failed to establish extreme hardship to his spouse as required under section 212(a)(h) of the Act, 8 U.S.C. §§ 1182(a)(h).

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility rests with the applicant. *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.