

PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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

Handwritten initials: A12

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[Redacted]

FILE: [Redacted]

Office: CHICAGO, ILLINOIS

Date:

JUL 17 2003

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:

[Redacted]

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Handwritten signature: Robert P. Wieman

Robert P. Wieman, Director
Administrative Appeals Office

JUL1703-07H2212

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois. The matter 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. The applicant 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 record indicates that the applicant married a U.S. citizen in 1997, and that he is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility in order to remain with his wife and child in the United States.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse and child. The application was denied accordingly. See *District Director Decision*, dated July 15, 2002.

On appeal, counsel states that the applicant's U.S. citizen wife (Mrs. [REDACTED]) and child will suffer extreme hardship if the applicant's waiver is denied. To support this assertion, counsel submitted a letter from Mrs. [REDACTED] and a copy of medical records for the applicant's U.S. citizen daughter [REDACTED]. No other information or evidence was submitted.

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

(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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

. . . .

(1) (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 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 Board of Immigration Appeals (BIA) decision, *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provided a list of factors the BIA deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

An undated letter written by Mrs. [REDACTED] states that her daughter, [REDACTED] is three years old and has a reactive airway disease/asthma condition that has required two emergency hospitalizations and special medical treatments. Mrs. [REDACTED] states that the applicant is the sole source of income for their family and that she needs her husband's help in order to care for their daughter and to continue her own full-time college studies. Mrs. [REDACTED] states further that it would be emotionally difficult for [REDACTED] if she were to be separated from her father, and that a separation would also cause Mrs. [REDACTED] emotional hardship.

A July 24, 2002, letter written by Dr. [REDACTED] M.D. states that [REDACTED] has a history of two hospitalizations for wheezing/reactive airway disease and that, as of June, 2002, [REDACTED] has been on regular maintenance medication (Flovent, 44 mcg, 2 puffs) to help control the occurrences.

A November 26, 2001, patient progress report indicates that Tiffany was hospitalized for asthma/infantile wheeze, and that she had a prior hospitalization in 1999 and a history of emergency visits to the hospital.

The record additionally contains several medical reports indicating that [REDACTED] parents brought her to the emergency room. The evidence in the record thus clearly establishes that the applicant's child suffers from a reactive airway/asthma condition. The evidence does not, however, establish how the applicant's removal from the United States would cause his wife or daughter to suffer extreme hardship either physically, emotionally or financially.

Although Mrs. [REDACTED] states in her letter that [REDACTED] is currently under special medical treatment and that she cannot care for her daughter without her husband's help, Mrs. [REDACTED]

provides no information regarding the type of treatment she is providing to her daughter, the length of time the treatment will be necessary, or how her husband helps her. It is noted that the evidence in the record indicates that Tiffany is on an inhaler-type maintenance medication program that has improved her condition and there is no indication in the record that Mrs. [REDACTED] could not administer this medication without the applicant's help.

Mrs. [REDACTED] states that she is unemployed and that she and her daughter rely on the applicant for financial support so that she can care for [REDACTED]. 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. In this case, no evidence was submitted to show that Mrs. [REDACTED] depends on the applicant financially. Moreover, the record indicates that [REDACTED] hospitalizations and medical treatment have been paid through Medicaid and not by the applicant. The record additionally indicates that Mrs. [REDACTED] is a full-time student and thus, presumably does not provide constant care to her daughter. The evidence in the record additionally fails to show that [REDACTED] would be unable to receive the care or medication she needs in Mexico if the family decided to move there.

Mrs. [REDACTED] states that she and Tiffany would suffer emotional hardship if her husband were removed from the United States. U.S. court decisions have held, however, that the common results of deportation or exclusion are insufficient to prove extreme hardship and that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). See also *Matter of Pilch*, 21 I&N Dec. 627 (BIA) 1996).

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to demonstrate that his U.S. citizen spouse and child would suffer extreme hardship if he were barred from admission into the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.