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U.S. Citizenship  
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FILE:

Office: LOS ANGELES, CA Date:

OCT 20 2006

IN RE:

[Redacted]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(2)(A).

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles, California. 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 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 been convicted of crimes involving moral turpitude. The record indicates that the applicant is married to a U.S. citizen and has two U.S. citizen children. The applicant seeks a waiver of inadmissibility in order to reside with his wife and children in the United States.

The district director found that there was no evidence in the record to support a finding that the applicant's spouse or children would suffer extreme hardship should the applicant be removed from the United States. The application was denied accordingly. *See District Director Decision*, dated February 17, 2005.

On appeal, counsel submits supplemental evidence to show that the applicant's spouse and children would suffer extreme hardship as a result of his inadmissibility. *Counsel's Brief*, dated April 12, 2005.

The record includes, but is not limited to the following documents: the applicant's spouse's naturalization certificate; the birth certificates of the applicant's two U.S. citizen children; a declaration from the applicant's spouse and a letter from the spouse's employer.

The record indicates that the applicant was convicted of Taking a Vehicle Without the Owner's Consent, a misdemeanor under California Penal Code, 10851(A) on October 6, 1992 and Receiving Stolen Property, a felony under California Penal Code, 496(A) on November 6, 1997.

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) states 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-
  - (I)(A) [I]t is established to the satisfaction of the Attorney General that-
    - (i) [T]he 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 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 activities leading up to the applicant's convictions took place on September 25, 1992 and August 1, 1997. An application for admission or adjustment is a "continuing" application adjudicated based on the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). There has been no final decision made on the applicant's I-485 application, so the applicant, as of today, is still seeking admission by virtue of adjustment from his unlawful status. Thus, the activities leading up to the applicant's convictions occurred less than 15 years from the date of this decision. The applicant is therefore statutorily ineligible for a waiver pursuant to section 212(h)(1)(A) of the Act. He is however, eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(B) of the Act.

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse, parent or child of the applicant. Hardship the alien himself experiences due to separation is irrelevant to section 212(h) waiver proceedings unless it causes hardship to the applicant's spouse and/or children. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (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. 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.

U.S. court decisions have additionally 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court additionally 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.

The AAO notes that extreme hardship to the applicant's spouse and/or children must be established in the event that they reside in Mexico or in the event that they reside in the United States, as they are not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse and/or children in the event that they reside in Mexico. The applicant's spouse states in her declaration, dated April 7, 2005, that she and her children would suffer extreme hardship as a result of relocating to Mexico. She states that her two children, ages 5 and 11, can speak Spanish, but cannot read or write in Spanish. She adds that the children speak predominantly in English because that is what they speak in school. She states that they have lived in the United States and attended school in the United States their entire lives. The applicant's spouse states that her children would have to live in poverty in Mexico, would be separated from their entire extended family and would no longer be able to attend school if they relocated to Mexico. She asserts that this adjustment would cause them extreme hardship, especially their oldest child. The AAO finds that the applicant's oldest child would suffer extreme hardship as a result of relocating to Mexico. Relocation to Mexico could have a severe impact on the oldest child's education and ability to prosper because he does not read or write in the Spanish language. In *Matter of Kao*, 23 I&N Dec. 45 (BIA 2001), the Board of Immigration Appeals found that adolescents would suffer extreme hardship as a result of relocating to a country where they do not know the culture or the language. Therefore, the record does reflect that relocation to Mexico will result in extreme hardship to the applicant's oldest child.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse and/or children remain in the United States. The applicant's spouse states in her declaration, that she and the children would be emotionally devastated if they were separated from the applicant. The applicant's spouse submitted no documentation to establish the extent of this emotional hardship and whether it would rise to the level of extreme. The applicant's spouse states that she works full-time while the applicant works part-time and he and the spouse's mother care for the children. She states that if the applicant was returned to Mexico she would find it hard to provide for herself and her children. The applicant's spouse submitted no evidence to support a finding of financial hardship. The AAO notes that the record indicated that the applicant's spouse and her children have a large extended family that either lives in the same house or close by. The applicant's spouse states that the applicant, the children and herself live in a large home with the applicant's mother and five siblings. She also states that her mother helps her with the children a lot and is very close to her. The record fails to establish that the applicant's spouse would be unable to receive help from these family members if the applicant was removed from the United States.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse and/or children would suffer hardship that was unusual or beyond that which would normally be expected upon removal. 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(h) 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.