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

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: EL PASO, TX Date: DEC 07 2004

IN RE: [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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, El Paso, Texas, 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 under sections 212(a)(2)(A)(i)(I) and 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(2)(A)(i)(I) and 1182(a)(6)(C)(i), for having been convicted of a crime involving moral turpitude and for having attempted to procure admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized United States citizen and seeks a waiver of inadmissibility pursuant to sections 212(h) and 212(i) of the Act, 8 U.S.C. §§ 1182(h) and 1182(i), so that he may reside in the United States with his spouse and children.

The district director concluded that the applicant had failed to establish that the adverse factors in the application were outweighed by the equities and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated October 21, 2002.

On appeal, the applicant states that his spouse and children are dependent on him for financial support; that he has assumed payments on a house since his mother passed away; that he helps his wife with the children and chores as a result of her chemotherapy and that he is responsible for his brother who is permanently disabled. *Letter from Pedro Vargas*, dated November 13, 2002.

In support of these assertions, the applicant submits a death certificate for his mother, dated February 7, 2002; a copy of the will of the applicant's mother, executed on December 26, 2001; a copy of a house payment; a copy of a consolidated real estate tax bill for 2001; copies of United States birth certificates for the applicant's three children; a copy of the naturalization certificate of the applicant's spouse; letters from physicians and medical professionals treating the applicant's spouse; a letter from the applicant's spouse, dated November 7, 2002 and a letter from the parents of the applicant's spouse. The entire record was considered in rendering a decision on the appeal.

The record reflects that on April 4, 1985, the applicant was convicted of Aggravated Robbery in El Paso County, Texas. The applicant was sentenced to confinement for a period of 10 years. On November 22, 1988, the applicant was removed from the United States as a result of his conviction for an aggravated felony. Subsequently, the applicant reentered the United States and was removed a second time on March 20, 1990. On May 31, 1994, the applicant attempted to enter the United States by making a false claim to United States citizenship. On September 3, 1996, the applicant was ordered removed by an Immigration Judge and was removed as ordered on September 4, 1996.

Section 212(a)(2)(A) of the Act 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.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

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) . . . 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 [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 . . .

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under sections 212(h) and (i) of the Act. 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).

The AAO notes that hardship suffered by the applicant's brother as a result of the applicant's inadmissibility is irrelevant to proceedings under sections 212(h) and (i) of the Act. *See Letter from Pedro Vargas* ("I was also made responsible for my brother ... I manage his finances...).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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 applicant asserts that his spouse underwent chemotherapy and a bone marrow transplant in order to combat cancer. *Letter from Nancy Sheriman, LMSW*, dated October 30, 2002. *See also Letter from Daniel R. Couriel, MD*, dated October 30, 2002. The applicant further contends that as a result of her treatments, his spouse is unable to maintain employment or care for the children and household without assistance. *Letter from Pedro Vargas*. The AAO recognizes that the illness of the applicant's spouse imposes hardship. The AAO notes, however, that the record fails to establish that the incapacity of the applicant's spouse is an ongoing condition that remains an issue. The record does not demonstrate whether or not the prescribed medications and treatments have been successful in combating the condition of the applicant's spouse. Further, the record fails to reflect that the applicant is the only person able to provide care for the applicant's spouse.

The applicant states that his children will suffer as a result of his absence. *Id.* The AAO notes however that the applicant fails to identify, document and support extreme hardship suffered by his children as a result of his inadmissibility. The assertions of the applicant, standing alone, do not form the basis for a finding of extreme hardship.

The record fails to make any assertions of hardship imposed on the applicant's spouse and/or children as a result of relocation to Mexico in order to remain with the applicant.

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, *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 (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. *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. The AAO recognizes that the applicant's spouse and children will likely endure hardship as a result of separation from the applicant. However, their situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and children caused by the applicant's inadmissibility to the United States. 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 sections 212(h) and (i) of the Act, the burden of proving eligibility remains entirely 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.