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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: CHICAGO, ILLINOIS Date: DEC 22 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:

[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, Director
Administrative Appeals Office

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 who first entered the United States without inspection in 1978. 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 is married to a U.S. citizen and is the beneficiary of an approved petition for alien relative filed by his U.S. citizen son. The applicant seeks a waiver of inadmissibility in order to reside with his wife 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 children. The application was denied accordingly. On appeal, counsel asserts that the applicant's wife will suffer extreme hardship if the applicant is removed from the United States. In support of her assertions, counsel submits a brief medical statement from a physician and a letter written by the applicant's wife.

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-
>
> > (1)(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 applicant was arrested and convicted in 1982 for driving under the influence of alcohol, in 1986 he was convicted of burglary, in 1990 he was arrested and later convicted for unlawful possession of a weapon by a felon, and in 1991 he was arrested for battery and later sentenced to community service for violating his parole. The most recent activities for which the applicant is inadmissible occurred less than 15 years prior to his application to adjust status. The applicant is therefore statutorily ineligible for a waiver pursuant to section 212(h)(1)(A) of the Act. The question remains whether the applicant qualifies for a waiver under section 212(h)(1)(B) of the Act.

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 (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. 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 documents submitted on appeal do not overcome the director's determination that the applicant failed to establish extreme hardship to his wife. [redacted] provides a list of six different medical conditions from which the applicant's wife suffers, and a comment that the applicant's wife has difficulty taking care of herself and needs the applicant's support. The doctor's letter does not state that the applicant's wife is disabled, that only the applicant would be able to assist her, or that she would be incapacitated in his absence. The applicant's wife writes that she needs the applicant's financial support; however, the record contains no documentation that, in the applicant's absence, his wife would suffer financial hardship. The applicant's wife also writes that, due to her medical problems, the applicant's assistance is a necessity. As noted, the medical documentation does not indicate that, without the applicant, the applicant's wife would be unable to function on her own or with help from individuals other than the applicant.

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 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.