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U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

H2

[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date:

IN RE: [redacted]

PETITION: 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 PETITIONER: 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, Los Angeles, California, 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 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 applicant is the spouse of a naturalized citizen of the United States and the father of four United States citizen children. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), 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 extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated December 3, 2003.

On appeal, the applicant asserts that the district director failed to take into account the fact that the applicant has United States citizen children and strong roots in this country. *Appeal Attachment*, dated December 15, 2003.

In support of these assertions, the applicant submits a brief dated December 15, 2003; a copy of the certificate of naturalization of the applicant's spouse; a copy of the marriage certificate for the applicant and his spouse; copies of the certified abstracts of birth and U.S. birth certificates of the applicant's children; copies of medical records for the applicant's children and evidence of scholastic achievement by the applicant's children. The record also contains documents relating to the criminal history of the applicant. The entire record was considered in rendering a decision on the appeal.

The record reflects that on April 21, 1999, the applicant was convicted of Robbery, Theft of Property. On August 8, 1995, the applicant pled no contest to Receiving Stolen Property. The applicant was convicted and sentenced to 90 days in Los Angeles County Jail.

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.
>
> (ii) Exception – Clause (i)(I) shall not apply to an alien who committed only one crime if –
>
> > (I) the crime was committed when the alien was under 18 years of age, and the crime was committed . . . more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States ...

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 . . .

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. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) 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).

*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 makes several generalized assertions contending that his children will suffer hardship if the applicant is removed from the United States. The applicant states that separation from his children *may* constitute extreme emotional and psychological hardship. Further, the applicant stipulates that a reduction in his financial contribution to the family will "likely substantially reduce their standard of living." *Appeal Attachment.* Although the petitioner asserts that his job prospects outside of the United States are minimal, he fails to provide evidence to substantiate his claim and the record, therefore, does not demonstrate that the applicant will be unable to continue financial contributions to his family from a location outside of the United States. The record fails to provide evidence that the children of the applicant will suffer "extreme emotional and psychological hardship" if separated from the applicant. The AAO notes that unsubstantiated assertions cannot serve as the basis for a finding of extreme hardship.

The AAO further notes that many of the assertions made by the applicant pertain to hardship suffered by him as a result of his inadmissibility. *Id.* (stating "The petitioner has friends and family residing in the United States. He has strong roots in this country. Petitioner is industrious and responsible and has a good job history.") As noted above, any hardship suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) of the Act. The applicant provides medical records for his son who suffers from

epilepsy and indicates that the child has experienced several attacks. *Id.* The record, however, does not demonstrate that the presence of the applicant in the United States is required to ensure the medical stability of his child. The record fails to link the medical condition of the applicant's child to the applicant's inadmissibility to the United States.

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, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, 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. The AAO recognizes that the applicant's spouse and children will 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 section 212(h) 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.