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

[redacted]

FILE: [redacted] Office: LOS ANGELES, CALIFORNIA Date: NOV 04 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, 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 entered the United States without inspection or admission in 1989. 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 crimes involving moral turpitude (infliction of corporal injury on a spouse and burglary). The record indicates that the applicant is married to a U.S. citizen and that he is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility in order to reside 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 October 8, 2003.

On appeal, counsel asserts that the applicant's wife and child will suffer psychological and financial hardship if the applicant is removed from the United States. In support of his assertions, counsel submitted school reports for the applicant's daughter.

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's conviction for burglary occurred on February 10, 1998, his conviction for infliction of corporal injury on his spouse occurred on June 28, 1999, after his petition for alien relative was filed on December 30, 1997. 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.

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.

Counsel's asserts that the applicant's wife, would suffer mentally if the applicant were returned to Mexico due to the conditions of poverty and crime to which the applicant would be subject in that country. Counsel refers to an article in support of this premise; however, no such article is found on the record. Counsel also states that if the applicant returns to Mexico, he will be unable to support his wife and child. There is no documentation to this effect on the record.

Counsel contends that the applicant's daughter, who is now seven years old, would suffer great psychological injury if the applicant is separated from her. In addition, counsel states that if the applicant's daughter accompanies the applicant to Mexico, she will be demoted to pre-school level and will suffer greatly due to her lack of skills in "formal, classroom Spanish." There is no documentation to substantiate counsel's assertions in this regard. The school records submitted on appeal do not demonstrate that the applicant's daughter would most likely be demoted or would be otherwise unable to integrate into the Mexican educational system. It is not known how much Spanish the applicant's daughter speaks; however, the record

implies that she has some knowledge of this language. Additionally, in Mexico, just as in the United States, children at the applicant's daughter's educational level are just beginning to acquire a formal, classroom vocabulary and have also recently begun to learn to read and write. There is no evidence that a transition from one system to another at the primary school level would occasion the educational disaster foretold by counsel.

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 child 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.