identifying data deleted to

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: SEP 1 2004

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:

[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 Acting 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 child of a United States citizen and a lawful permanent resident of the United States. The applicant 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 parents and siblings.

The acting 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 Interim District Director*, dated February 14, 2003.

On appeal, counsel asserts that the parents of the applicant depend on the applicant for significant economic support and the applicant's mother suffers from severe emotional and psychological distress owing to the applicant's potential removal from the United States. *Appeal Brief Re Denial of I-601 Waiver*, dated March 13, 2003.

In support of these assertions, counsel submits a psychological evaluation for the applicant's mother, dated March 13, 2003; a copy of an employment document for the applicant's mother, dated December 8, 2000 and an affidavit of the applicant's mother, dated March 13, 2003. The entire record was considered in rendering a decision on the appeal.

The record reflects that on April 29, 1998, the applicant was convicted of Burglary and Receiving Stolen Property in the Municipal Court of Huntington Park, County of Los Angeles.

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(h) of the Act provides, in pertinent part:

> (h) The Attorney General [Secretary of Homeland Security (Secretary)] 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.

Counsel contends that the applicant's parents would suffer extreme financial hardship if the applicant were removed from the United States. Counsel states that the applicant's mother was laid off from her job and has not worked since 2000. *Notice of Change in Employment Status*, dated December 8, 2000. Counsel further asserts that although several adults reside in the home of the applicant's parents, these individuals are unable to contribute to the financial stability of the applicant's parents. *Appeal Brief Re Denial of I-601 Waiver*, dated March 13, 2003. *See also Letter from Joseph M. Cervantes, PhD, FAClinP*, dated March 13, 2003 ("[The applicant's mother] stated that in [her] home reside all of their children with the exception of Francisco ....[The applicant's father] further indicated that his brother...also lives with them..."). The record fails to establish that the applicant's mother is unable to work in an effort to support herself and her family. Although it is unfortunate that the applicant's mother was laid off from her previous job, the record does not demonstrate that the applicant's mother has attempted to secure employment since 2000. Further, beyond the assertions of counsel and statements by the applicant's mother, the record fails to evidence that the applicant's parents are not able to survive on the income generated by the employment of the applicant's father. On the contrary, the record indicates that the applicant's mother "impresses as an individual who has had a continuous level of economic and emotional stability for a long period of time..." *Letter from Joseph M. Cervantes, PhD, FAClinP* at 6. The record does not substantiate the statements of counsel regarding the employment and earnings of the other adults residing with the applicant's parents. 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.

Counsel also contends that the applicant's mother suffers extreme emotional hardship as a result of the applicant's inadmissibility to the United States. Counsel offers a psychological evaluation of the applicant's mother as evidence of her hardship. *Letter from Joseph M. Cervantes, PhD, FAClinP.* The AAO notes that the evaluating psychologist determined that the applicant's mother suffers from significant emotional and physical distress resulting in a combination of psychiatric symptomology. *Id.* at 6. The AAO further notes,

however, that the evaluating psychologist does not recommend treatment or medication for the applicant's mother, but instead recommends that the applicant be favorably considered for legal residency status in order to alleviate the condition of his mother. *Id.* at 7. The record fails to evidence an ongoing relationship between the applicant's mother and a mental health professional and the record does not establish that the applicant's mother receives any treatment to combat or alleviate her condition.

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. The AAO recognizes that the applicant's parents may 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 parents 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.