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U.S. Citizenship and Immigration Services

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[redacted]

JAN 31 2005

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

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act (INA), 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. The applicant was found inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), as an alien convicted of a crime involving moral turpitude. The applicant married a United States citizen (hereinafter, Ms. on September 15, 1995 and is the beneficiary of an approved Petition for Alien Relative. 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 with his spouse and two United States citizen children in the United States.

The District Director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse or children. The application was denied accordingly. *Decision of the District Director*, dated April 28, 2004.

On appeal, counsel contends that Ms. nd the two children will suffer extreme hardship if the applicant is required to return to Mexico. In support of the appeal, counsel submited a brief, an affadivit from Ms an affidavit from Ms. mother, school records for the children, the 2003 Department of State Country Reports on Human Rights Practices for Mexico, a letter from Newport Community Counseling Center concerning the applicant and Ms and various financial records. The entire record was reviewed and considered in rendering a decision on the appeal.

On July 12, 1993, the applicant was convicted of burglary in the second degree, a crime of moral turpitude. On November 7, 1996, the applicant was convicted of assault with a deadly weapon, a crime of moral turpitude.

Section 212(a)(2)(A) of the Act provides, in pertinent part:

> (i) In general.—Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the 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) of the Act provides, in pertinent part:

> The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . if—

> (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 [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;
>
> . . . and
>
> (2) the [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status. . .

A section 212(h) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse, parent, son or daughter of the applicant. Hardship to the alien himself is not a permissible consideration under the statute.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez,* the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). 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).

I. Potential Hardship to Ms. and the Children if They Accompany the Applicant to Mexico

Each of the *Cervantes* factors will be analyzed in turn. First analyzed is the financial impact of departure from the United States. Counsel contends that Ms. and the children will experience financial

hardship if they move with the applicant to Mexico, because Ms will lose her position as manager at Bergstroms Children Stores, where she has excellent benefits. Counsel asserted that Ms will not be able to find suitable employment in Mexico. Aside from stating that the unemployment rate in Mexico is high, counsel provided no evidence to support this claim, nor does Counsel address the applicant's employment prospects in Mexico.

Next analyzed are country conditions where the qualifying relative would relocate. Counsel submitted the 2003 U.S. Department of State Country Report for Mexico. Counsel stated that "Mexico, the country to where Ms would have to relocate, is not considered to be a highly desirable country in which to live, due to its appalling social, economic and political conditions." Counsel referred to the country's high crime rate, growing drug trafficking problem, government corruption, and high unemployment rate. Counsel does not explain how these general country conditions relate specifically to Ms or the children.

The next *Cervantes* factor is significant health conditions of the qualifying relative. Counsel stated that Ms. had back surgery in 1998, and that ongoing treatment for her condition would be expensive, and perhaps unavailable, in Mexico. Counsel does not explain what treatment Ms requires, nor does he offer evidence that this treatment would be unavailable in Mexico. Ms. back condition has not prevented her from advancing professionally. Counsel does not refer to any health conditions related to the children.

The final *Cervantes* factor is family ties. M and the children have no family members in Mexico. Counsel contends that this lack of family ties, combined with the cultural differences between Mexico and the United States, would make living in Mexico a "terrible ordeal" for Ms. and the children. Ms. speaks minimal Spanish. The children, ages 11 and 7, have never visited Mexico and do not speak Spanish. The applicant's 11 year-old son has spent his entire life in the United States and has been completely integrated into an American lifestyle, therefore it would be very difficult for him to make an adequate transition to daily life in Mexico. In *Matter of Kao*, 23 I. & N. Dec. 45, (BIA 2001), the Board of Immigration Appeals found that the respondents met the extreme hardship requirement where their 15 year-old United States citizen daughter had spent all her life in the United States, had been completely integrated into the American lifestyle, and did not fluently speak the language of the country where she would relocate. Accordingly, the AAO finds that the applicant has demonstrated that his United States citizen son would suffer extreme hardship if he relocates to Mexico

II. Potential Hardship to Ms and the Children if They Remain in the United States

Ms. and the children are United States citizens and are not required to accompany the applicant to Mexico. The issue is whether such a separation would cause extreme hardship to Ms and the children.

First analyzed is the financial effect of the applicant's departure. Aside from referring to the cost of travel to Mexico, counsel does not address the possible financial impact of the applicant's departure from the United States. Ms stated that without the applicant's income, she and the children could not afford to live in their current home, and that she could not support her children. The record contains Federal Income Tax

Returns for 2002 and 2003, which list household income as $28,856 and $34,950, respectively. The record also contains Ms. W-2 Wage and Tax Statements for 2002 and 2003, which list her income as $28,856 and $34,950, respectively. Ms. wages comprise the family's total income. Accordingly, Ms. statement that she cannot support herself and the children without the applicant's income is not supported by the record.

Additionally, the AAO notes that Ms was promoted to a managerial position in 2004, which may have included a salary increase.

Next analyzed are significant health conditions. As indicated earlier, Ms had back surgery in 1998, but this condition has not prevented her from advancing professionally. Counsel indicated that Ms. health insurance has covered any ongoing treatment. Counsel did not refer to any health conditions related to the children.

Finally, family ties will be analyzed. Counsel contends that trips to Mexico by Ms and the children would be "burdensome and financially unaffordable." Counsel provided no evidence to support this claim. The AAO notes that the Farldows live in southern California, so Mexico is readily accessible.

Counsel asserts that "Ms has developed serious emotional anxiety caused by possible removal of her husband from the United States." Counsel submitted a letter from licensed marriage family therapist, Newport Community Counseling Center. Ms stated:

> I am seein and n therapy once a week for several sessions. They have emotional issues resulting from the possibility that Mr may lose immigration status, which they feel would be a severe hardship and disruption for Mrs and the children.

M does not describe these "emotional issues" or whether she has had success in treating the applicant and Ms. Anxiety is a normal reaction to family separation, but counsel provided no evidence suggesting the effect would be severe. Additionally, counsel stated:

> Ms. has no close family members outside the United States. She is extremely close to her family, all of whom she visits on a regular basis, speaks to regularly on the telephone, and with whom she spends birthdays, secular holidays, religious holidays, and family vacations. Ms. s especially close to her four children who reside with her and her mother, .

Ms has extensive family in the United States who will be able to emotionally support her and the children if the applicant returns to Mexico.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that Ms r the two children will face extreme hardship if the applicant is refused admission and Ms nd the children remain in the United States. Rather, the record demonstrates that she and the children will face no greater hardship than the unfortunate, but expected, disruptions,

inconveniences, and difficulties arising whenever a spouse is removed from the United States. Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse or children as required under INA § 212(h), 8 U.S.C. § 1186(h). 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 of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.