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

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[redacted]

MAR 0 8 2005

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

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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 Application for a Waiver of Inadmissibility 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 record reflects that the applicant is a native and citizen of Mexico who entered the United States without inspection in 1988. He is the beneficiary of an approved petition for alien relative filed by his U.S. citizen father. On December 16, 2003, the district director found that the applicant was inadmissible to the U.S. pursuant to § 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1182(a)(2)(A)(i)(I), as an alien who has been convicted of crimes involving moral turpitude: second degree robbery in 1992 and infliction of corporal injury on a spouse in 1995. The applicant's waiver application was denied, because the district director determined that the record failed to establish that the applicant's parents or two U.S. citizen children would suffer extreme hardship if the applicant were removed.

On appeal, counsel asserts that the district director incorrectly weighed the discretionary factors involved, and that she erred in failing to find that the applicant's inadmissibility would cause his parents and children extreme hardship. Counsel submits a brief and a copy of the probation officer's report in the applicant's 1992 criminal case.

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 convicted of second degree robbery, in violation of California Penal Code (CPC) § 211 in September 1992, and he was convicted of inflicting corporal injury on his spouse in violation of CPCD § 273.5(A) in September 1995. As his convictions occurred less than 15 years prior to the adjudication of his application to adjust status, the applicant is statutorily ineligible for a waiver pursuant to § 212(h)(1)(A) of the Act. He is however, eligible to apply for a waiver of inadmissibility pursuant to § 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.

In the analysis of eligibility for the § 212(h) waiver, a finding of extreme hardship must precede any discretionary balancing tests. In this case, since the district director determined that the applicant had failed to establish extreme hardship to his qualifying relatives, it was unnecessary to conduct a discretionary analysis of the positive and negative factors present.

Counsel states that if the applicant is removed to Mexico, he will be unable to provide for his family in the manner to which they are accustomed. The documentation on the record does not support of this contention. However, even if it accepted that the applicant's earnings might be less in Mexico, the record does not establish that his wife cannot make necessary household adjustments, or that she has no alternative sources of income other than that of the applicant. The record contains an affidavit dated December 1, 1999 by the applicant's father. In his affidavit, the applicant's father stated that the applicant's inadmissibility would cause the entire family to suffer great hardship. He indicated that "everybody" resides in the United States, presumably referring to the applicant's relatives, and he noted that the applicant had two children to support. Nevertheless, the evidence on the record does not establish that the applicant's children or parents would suffer extreme financial hardship upon his removal. It is noted that 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 removal of a family member usually causes some type of hardship, whether emotional, financial, or physical. However, in order to qualify for this waiver, it must be shown that the hardship in the instant case goes beyond that which is normally expected. A review of the documentation on the record in this case, when considered in its totality, reflects that the applicant has failed to show that his parents and children would suffer hardship that was unusual or beyond the norm. 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 § 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.