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

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[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: AUG 05 2005

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:

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. 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 El Salvador who 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 a crime involving moral turpitude (inflicting corporal injury resulting in a traumatic condition). The record indicates that the applicant has three U.S. citizen children and a lawful permanent resident father. The applicant seeks a waiver of inadmissibility in order to reside with his family in the United States.

The district director found that the applicant demonstrated that a qualifying relative would experience extreme hardship if he were removed from the United States, however, the applicant would not be eligible for a favorable exercise of discretion as he committed a crime of violence and failed to show exceptional and extremely unusual hardship to a qualifying relative. *District Director's Decision,* dated December 16, 2003.

On appeal, the applicant asserts that the denial of his application would create great emotional and financial hardship to his common law wife and three children, would cause great emotional harm to him as he would not be able to support or care for his family and most of his immediate family is in the United States. *Form I-290B*, dated January 5, 2004.

The record contains previously submitted documents including letters from the applicant's children, father and the mother of his children. The entire record was reviewed and considered in arriving at a decision on the appeal.

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-
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> (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, that:

> (h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if –
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> . . . .
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> (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.

The district director determined that the applicant demonstrated that a qualifying relative would experience extreme hardship should the applicant be removed from the United States. *District Director's Decision*, at 2. There is no indication of how this conclusion was reached or to which qualifying relative the district director was referring.

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 lawful permanent resident or United States citizen family ties to 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.

An analysis under the factors mentioned in this case is appropriate for the case at hand. The record does not mention any family ties to the United States or than the qualifying relatives themselves. The record does not mention family ties outside of the United States for any of the qualifying relatives. The record does not mention the conditions in the country to which any of the qualifying relatives would relocate and the extent of the qualifying relatives ties to that country. The applicant asserts that the denial of his application would create great emotional and financial hardship to his common law wife and three children. The record does not reflect that the applicant has a legal, common law marriage as California does not permit common law marriages and there is no indication that they entered into a common law marriage in another state. Therefore, it appears that he is living with the mother of his children and she is not a qualifying relative under section 212(h) of the Act. Letters from two of the applicant's children state that the applicant pays the rent and pays for food. *Letters from* [redacted] *and* [redacted] undated. The mother of the applicant's children states that the applicant pays for the rent, gas, etc. *Letter from Gabriela Sandoval*, undated. The applicant has not provided any documentation verifying the financial impact of departure from this country. There is no mention of any significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which any of the qualifying relatives would relocate. The applicant asserts that the denial of his application would cause great emotional harm to him as he would not be able to support or care for his family and most of his immediate family is in the United States. The AAO notes that these are not relevant factors to this analysis. Based on the record, the AAO disagrees with the district director's decision that the applicant has demonstrated extreme hardship to a qualifying relative.

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.

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 children or lawful permanent resident father would suffer hardship that was unusual or beyond that which would normally be expected upon removal.

The district director made a finding of extreme hardship and subsequently determined that the applicant was not deserving of a favorable exercise of discretion pursuant to section 212.7(d) of Title 8 of the Code of Federal Regulations which states in pertinent part:

> (d) Criminal grounds of inadmissibility involving dangerous or violent crimes. The Attorney General [now, Secretary, Homeland Security, "Secretary"], in general, will not favorably exercise discretion under section 212(h)(2) of the Act...in cases involving violent or dangerous crimes, except...in cases in which the alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship.

The AAO agrees with the decision of the district director in regards to the finding that the applicant was convicted of a violent crime. Section 16 of Title 18 of the United States Code states:

> The term "crime of violence" means-
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> (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
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> (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

The record reflects that the applicant was convicted under section 273.5(A) of the California Penal Code for inflicting corporal injury resulting in a traumatic condition to the mother of his children. Section 273.5(A) of the California Penal Code states in pertinent part:

> (a) Any person who willfully inflicts upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child, corporal injury resulting in a traumatic condition, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars ($6,000) or by both that fine and imprisonment.
>
> (b) Holding oneself out to be the husband or wife of the person with whom one is cohabiting is not necessary to constitute cohabitation as the term is used in this section.

> (c) As used in this section, "traumatic condition" means a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by a physical force.

The statute upon which the applicant was convicted is an offense which involves the use of physical force against another person, therefore, it is a crime of violence under section 16 of Title 18 of the United States Code. Specifically, the statute refers to infliction of corporal injury upon a member of a specific group of people resulting in a traumatic condition. The AAO agrees with the finding of the district director in regard to the lack of exceptional and extremely unusual hardship, however, notes that this finding and the finding of the applicant's commission of a crime of violence is not necessary due to a lack of the statutory finding of extreme hardship.

Having found the applicant statutorily ineligible for relief, no purpose would be served in an additional discussion of 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.