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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: SEP 02 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:

[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 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 (lewd and lascivious acts with a child under 14). The record indicates that the applicant has two U.S. citizen children and a U.S. citizen spouse. The applicant seeks a waiver of inadmissibility in order to reside with his family 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 or children and the application was denied accordingly. *District Director's Decision,* dated March 29, 2004.

On appeal, counsel asserts that the district director abused her discretion and failed to consider all of the appropriate factors. *Brief in Support of Appeal*, undated.

The record contains the aforementioned brief and previously submitted documents including, but not limited to, an affidavit from the applicant's spouse, proof of citizenship for the applicant's qualifying relatives and copies of the applicant's joint tax returns. 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 AAO notes that section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

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 *Matter of Cervantes-Gonzalez* is appropriate for the case at hand. The record does not include evidence of any family ties to the United States other than the qualifying relatives themselves. Counsel states that there is a lack of family in the native country. *Brief in Support of Appeal* at 3. The record does not include evidence of the conditions in Mexico, other than a reference to educational restrictions and a lower standard of living. *Id.* at 4,6. The record does not include evidence of ties of the qualifying relatives to Mexico, if any.

In regard to the financial impact of departure, counsel asserts that the applicant is the sole provider for the family and his family is covered under his medical insurance. *Id.* at 2. Counsel asserts that that the applicant would be unable to maintain two separate households and would be unable to find similar employment in Mexico. *Id.* The record indicates that the applicant's spouse has worked in the past and there is no evidence that she cannot work in the future. Furthermore, there is no evidence that the applicant cannot find employment in Mexico.

There is no evidence of any significant conditions of health, particularly when tied to an unavailability of suitable medical care in Mexico. Counsel states that the children have no known medical, mental or emotional problems. *Id.* However, counsel speculates that hardship such as untreated illness, malnutrition or starvation may result from a complete inability to work in another country. *Id.* at 6. Counsel asserts that the children would be traumatized by separation from the applicant, but provides no evidence to substantiate his assertion. *Id.* at 2.

Counsel has made numerous assertions not supported by documentation. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel asserts that the children would be deprived of their rights as citizens to enjoy the educational, economic and medical benefits in the United States. *Id.* at 4. The AAO notes that as U.S. citizens, there is no

requirement for the qualifying relatives to leave the United States. No evidence has been submitted to establish that the children and their mother would be unable to maintain their access to educational, economic and medical benefits should they remain in the United States.

The AAO recognizes the difficulty in relocating to Mexico, particularly for the two children. However, the record does not reflect extreme hardship to any of the qualifying relatives in the event of relocation to Mexico. Furthermore, counsel does not establish extreme hardship in the event that the applicant's qualifying relatives remain in the United States.

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 spouse or children would suffer hardship that is 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 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.