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

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[Redacted]

FILE: [Redacted] Office: LOS ANGELES, CA Date: **APR 13 2006**

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 Honduras 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 crimes involving moral turpitude (three theft convictions). The record indicates that the applicant has a U.S. citizen spouse and two U.S. citizen children. The applicant seeks a waiver of inadmissibility in order to reside with her family in the United States.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on her spouse and denied the Application for Waiver of Grounds of Excludability. *Decision of the District Director*, dated September 9, 2004.

On appeal, counsel asserts that the district director did not consider hardship to the applicant's U.S. citizen children. *Form I-290B*, dated October 7, 2004.

The record contains counsel's brief, a community health center letter, a psychologist's letter, a letter from the applicant and a letter from the applicant's daughter. 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-
 - (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 –

....

- (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. The district

director correctly cited section 212(h) of the Act, but erred in stating that only the effects on the U.S. citizen spouse could be considered. Counsel is correct in stating that hardship to the applicant's U.S. citizen children must also be taken into account. 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 deems relevant in determining whether an alien has established extreme hardship. These factors included, but are not limited to, 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to one of the qualifying relatives must be established in the event that they relocate to Honduras or in the event that they remain in the United States, as they are not required to reside outside of the United States based on denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of relocation to Honduras. The AAO notes that Honduras is currently listed as a country whose nationals are eligible for Temporary Protected Status due to the damage done to the country from Hurricane Mitch and the subsequent inability of Honduras to handle the return of its nationals. *Federal Register*, Volume 69, Number 212, November 3, 2004. Under the TPS program, citizens of Honduras are allowed to remain in the United States temporarily due to the inability of Honduras to handle the return of its nationals due to the disruption of living conditions. As such, requiring the applicant's U.S. citizen family members to relocate to Honduras in its current state would constitute extreme hardship.

The AAO also finds that the applicant's children, ages 19 and 16, would face extreme hardship independent of the TPS-related finding of extreme hardship. The record indicates that the children are integrated into the U.S. lifestyle and educational system. Counsel states that the children were born and raised in the United States, speak limited Spanish and have limited experience with Honduran culture. *Brief in Support of Appeal*, at 3, dated November 1, 2004. The BIA found that a fifteen-year-old child who lived her entire life in the United States, was completely integrated into the American lifestyle and was not fluent in Chinese would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The AAO finds *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern.

The second part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event that they remain in the United States. There are no contentions made in regard to the applicant's spouse regarding extreme hardship should he remain in the United States. In regard to the applicant's children, the applicant's daughter states that she and her brother are very close to the applicant. *Statement from the Applicant's Daughter*, dated November 10, 2004. The AAO notes that separation entails inherent emotional stress which are common to those involved in the situation. The record includes a letter stating that the applicant's son is receiving case management services and mental health services will be provided when

there is a therapist opening. [REDACTED] *Community Mental Health Center*, dated October 4, 2004. The AAO notes that this letter is lacking sufficient detail that would contribute to a finding of extreme hardship should the applicant's son remain in the United States without the applicant. The psychological evaluation states that both of the children have behavioral problems related to exposure to domestic violence, which resulted in the applicant's spouse's incarceration in 1992. *Psychological Evaluation*, at 2, 5-6, dated December 19, 2001. The record does not include any substantiating evidence for the statements made in this one-time psychological evaluation or that the children would not be safe if left with their father. Therefore, the record does not demonstrate extreme hardship to the applicant's children should they remain in the United States without the applicant.

U.S. court decisions have 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.

The AAO notes that a review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative in the event that they remain in the United States without the applicant. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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.