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 Date: JUL 07 2006

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(h) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§1182(h) and 1182(i)

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, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Los Angeles, California, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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. The applicant is the son of a naturalized U.S. citizen. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his mother.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated January 7, 2005.

The record reflects that, on May 26, 1999, the applicant was convicted of felony assault with a deadly weapon or other instrument or with force likely to cause great bodily injury in violation of section 245(A)(1) of the California Penal Code. The applicant was sentenced to 110 days in jail and 3 years of probation. Counsel stipulated that the crime was not committed with a weapon and did not result in great bodily injury. On August 27, 1999, the applicant filed an Application for Voluntary Departure Under The Family Unity Program (Form I-817), as the unmarried child of a legalized alien. The application indicated that the applicant had never been arrested or convicted of any crime, excluding traffic violations. The Form I-817 was approved and the applicant's voluntary departure was extended and he was issued employment authorization for a period of two years.

On June 16, 2000, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen mother. On July 17, 2001, the applicant was convicted of burglary in violation of section 211 of the California Penal Code, a crime involving moral turpitude. The applicant was sentenced to 45 days in jail and 36 months of probation. The record shows that the applicant appeared at Citizenship and Immigration Services' (CIS) Los Angeles District Office on March 10, 2003. The applicant admitted that he had been convicted of felony assault with a deadly weapon or other instrument or with force likely to cause great bodily injury and burglary.

On April 5, 2004, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On appeal, the applicant contends that he qualifies for a waiver because of his mother's devastation in regard to his situation and because he was immature when he committed the crimes and has since rehabilitated himself. *See Applicant's Brief* dated February 9, 2005. In support of the appeal, the applicant only submitted the above-referenced brief. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A)(i) of the Act states in pertinent part:

(1) Criminal and related grounds. —

(A) Conviction of certain crimes. -

(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 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:

Waiver of subsection (a)(2)(A)(i)(I) . . .

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I). . . if

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –

(i) . . . the 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 [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 based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's admission to and conviction for burglary, a crime involving moral turpitude. The applicant does not contest the district director's determination of inadmissibility. The applicant contends he should be granted a waiver of his grounds of inadmissibility because he is rehabilitated. Unfortunately, the crime involving moral turpitude for which the applicant was found inadmissible occurred less than 15 years prior to the applicant's application for an immigrant visa or the date of this decision. Therefore, the AAO finds the applicant is statutorily ineligible to apply for a waiver under section 212(h)(1)(A) since he does not meet the

requirement that the activities for which he is inadmissible occurred more than 15 years prior to his application for an immigrant visa.

The AAO also finds that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring benefits under the Act by fraud or willful misrepresentation.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record reflects that the Form I-817 the applicant filed in 1999 indicated he had never been arrested or convicted of any crime, excluding traffic violations. Whether an applicant for voluntary departure under the family unity program has been convicted of a crime is an essential element for obtaining the benefit under the Act, since an applicant who has been convicted of a felony or three or more misdemeanor offenses is not eligible for voluntary departure under the family unity program. *See* 8 C.F.R. § 236.13(b). Moreover, if the applicant had not concealed his conviction for felony assault with a deadly weapon or other instrument or with force likely to cause great bodily injury, he would not have been found eligible for voluntary departure under the family unity program. As such, the applicant obtained benefits under the Act by fraud or willful misrepresentation and is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

While a section 212(h) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse, child or parent of the applicant, a section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. It is noted that Congress specifically did not include hardship to an alien's children as a factor to be considered in assessing section 212(i) extreme

hardship. Hardship to the alien himself is not a permissible consideration under either a section 212(h) or 212(i) waiver of the Act and hardship to the applicant will not be considered in this decision, except as it may affect his mother, the only qualifying relative.

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 at 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 pursuant to section 212(i) of the Act. 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).

The record reflects that the applicant is the son of [redacted], who is a native of Mexico who became a lawful permanent resident of the United States in 1990 and a naturalized U.S. citizen in 1999. The applicant is not married and does not have any children. [redacted] has 3 other grown children who reside in the United States as either lawful permanent residents or U.S. citizens. The record reflects further that the applicant is in his 20's, [redacted] is in her 40's, and [redacted] does not have any health concerns.

The applicant contends that [redacted] would suffer extreme hardship if she were to remain in the United States without him. In his brief, the applicant states that [redacted] "would obviously be devastated at the pathetic condition that he would be in" if he were deported to Mexico. In his affidavit, the applicant states "I am sure she would be heart-broken to see me have to live in a country that I know nothing about."

Financial records indicate that [redacted] has been employed with Apple Trim since 2002 and earns a salary of $270 per week, which equates to approximately $14,040 per year. Financial records also show that prior to joining Apple Trim, in 2000, [redacted] contributed approximately $11,066 to the household income. There are no financial records to indicate the applicant's salary or what costs are associated with the household and there is no evidence in the record to suggest that [redacted] is financially dependent upon the applicant in any way. The record reflects that [redacted] not only resides with the applicant but also with three of his grown siblings, who may be able to provide financial and emotional support in the applicant's absence. The

record shows that, even without assistance from the applicant or his siblings, has, in the past, earned sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines,* http://aspe.hhs.gov/poverty/figures-fed-reg.shtml. The applicant does not assert and there is no evidence in the record to suggest that [redacted] suffers from a physical or mental illness that would cause her to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. Additionally, the record reflects that the applicant's father, who resides in Mexico, may be able to provide financial and emotional assistance to the applicant in Mexico, which in turn might ease [redacted] concerns for the applicant.

The applicant does not contend in either his brief or affidavit that [redacted] would suffer hardship if she were to return to Mexico with him. The AAO is, therefore, unable to find that the applicant's mother would experience hardship should she return with the applicant to Mexico. Additionally, the AAO notes that, as a U.S. citizen, the applicant's mother is not required to reside outside of the United States as a result of denial of the applicant's waiver request.

The applicant contends that the district director used perverse reasoning when he stated that the applicant's mother is not obligated to leave the United States, because the hardship that a U.S. citizen relative would suffer would never be a factor since the argument could always be made that the relative does not have to live in the United States. The AAO finds that the applicant's argument is not logical. The AAO will, therefore, assume that the applicant's contention is that the hardship that a U.S. citizen relative would suffer in the foreign country would never be a factor since the argument could always be made that the relative does not have to leave United States. There is no law that requires a qualifying relative to accompany an applicant to a foreign country if they are denied a waiver. Therefore, an applicant must establish that the qualifying relative would suffer extreme hardship if they were to remain in the United States without the applicant *and* if they were to return to the foreign country with the applicant. Therefore, the AAO finds that the applicant's contention that the hardship an applicant's qualifying relative would suffer if they returned to the foreign country is never a factor in deciding whether an applicant has established that the qualifying relative would suffer extreme hardship is incorrect.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's mother would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [redacted] will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a son is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in sections 212(h) and 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. 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 his U.S. citizen mother as required under sections 212(h) and 212(i) of the Act. 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. However, the AAO does note that the applicant's length of residence in the United States and his ties to the community and his family members in the United States would be factors in deciding whether the applicant merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under sections 212(h) and 212(i) 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.