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U.S. Citizenship and Immigration Services

**PUBLIC COPY**

[redacted]

FILE: [redacted] Office: LOS ANGELES DISTRICT OFFICE Date: MAR 2 0 2006

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act (INA), 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 31-year-old native and citizen of Mexico who is 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 seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), to remain in the U.S. with his wife and son.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and son and denied the application accordingly.

On appeal, counsel states that separation from the applicant would cause extreme hardship to the applicant's son, who is autistic, and his wife, who relies on her husband for both financial support and support in caring for their challenged son. In support of the appeal, counsel submitted educational and psychological evaluations of the applicant's son. The entire record, including documents prepared for and submitted in support of the applications for adjustment of status and waiver of inadmissibility as well as those submitted with the appeal was considered in making this decision.

Section 212(a)(2) of the Act states in pertinent part, that:

> (A)(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.

The applicant's inadmissibility is based upon his conviction in 1996 of Attempt to Receive Stolen Property. He was also convicted of petty theft in 1992. The applicant does not contest inadmissibility. The question on appeal is whether the applicant qualifies for a waiver.

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 . . . .

A section 212(h) waiver is therefore first dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse, parent or child of the applicant. Hardship to the alien himself is not a permissible consideration under the statute. If extreme hardship is established, the AAO still must determine whether the applicant merits a favorable exercise of discretion.

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, 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). In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

The record reflects that the applicant's spouse is a 24-year-old naturalized U.S. citizen of Mexican origin. She has been married to the applicant for five years and living with him for ten years. Their son, [redacted] is seven years old. A daughter was born in 2003 and died less than two months after birth. Counsel states on Form I-290B that the applicant's spouse was traumatized by the loss of her child. Her husband was supportive through this ordeal, fighting for the best treatment for their child and consoling his wife. *See, Declaration of* [redacted] June 24, 2004. No psychological evaluation of the applicant's spouse was provided. There is no available objective evidence to determine the degree to which the applicant's spouse was traumatized by this death, or what effect her husband's removal would have on her when considered in the context of the death of her child. The evidence submitted is general; based upon the evidence it is clear that in general, the applicant has provided financial and emotional support for his family. *See, Declaration of* [redacted] *and* [redacted], June 22, 2004.

The applicant and his spouse were both born in Mexico. Spanish is the language that they speak at home. *Psychological Evaluation,* [redacted] Psy.D. June 6, 2003. There is no

information in the record to indicate whether the applicant's spouse could relocate to Mexico, what her job prospects or those of her spouse would be, what family support is available to her. There is no information concerning the type of schooling that would be available for the applicant's child in Mexico.

The applicant's son has been diagnosed with autism. ***See, Inglewood Unified School District, Initial Psychoeducational Assessment,*** Page 8. He responds better to adult attention and interaction to socializing with children. *Psychoeducational Assessment,* Pages 2-3. To facilitate his development, the school psychologist recommended that his schooling be supplemented by review of work at home. *Psychoeducational Assessment,* **Page 9. A psychologist recommended therapy for the child and counseling** for the parents to help modify the child's behavior and redirect activities. *Psychological Evaluation,* [redacted] Psy.D. June 6, 2003. The applicant's wife stays home to care for her son. The applicant is the only wage earner in the family. There is no indication the degree to which the applicant assists his wife in any home care directed at modifying the child's behavior or redirecting his activities. There is insufficient evidence to conclude that the applicant's wife must stay at home to care for her son.

**The evidence in the record is very general and too insufficient to establish extreme hardship.** Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS,* 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

Particularly in the Ninth Circuit, courts have recognized that, in certain cases, economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme. "Included among these are the personal hardships which flow naturally from an economic loss decreased health care, educational opportunities, and general material welfare." *Mejia-Carrillo v. INS,* 656 F.2d 520, 522 (9th cir. 1981) (citations omitted); *see also Santana-Figueroa v. INS,* 644 F.2d 1354, 1358 (9th cir. 1981) ("Economic loss often accompanies deportation. Even a significant reduction in standard of living is not, by itself, a basis for relief. . . . But deportation may also result in the loss of all that makes life possible. When an alien would be deprived of the means to survive, or condemned to exist in life-threatening squalor, the "economic" character of the hardship makes it no less severe.")

While it is possible to imagine that with certain specific evidence, the combination of economic, emotional, psychological and developmental factors present in this case could amount to extreme hardship, there is insufficient specific evidence in this record to support such a conclusion. The affidavits do not describe with

specificity the degree to which the applicant relates to his son or helps with his development. There are no professional statements in the record about the importance of the applicant in his son's life. In short, the record contains too little information to conclude that separation or relocation of this family would be a greater hardship than the separation or relocation of a typical family. The fact of the child's autism alone is insufficient to establish extreme hardship, there must be some link between that challenge and any added difficulties to the family that would be caused by the applicant's removal.

Counsel speaks to the effect of removal upon the family in her appeal:

> This is a child with special needs who has changed the lives of everyone around him. He is a very loving child with a promising future as long as he is raised with the support, care and education that the professionals have set up for him. Removing him from his environment or altering his environment in any manner would not only set his progress back, but could traumatize him further, jeopardizing his future development and his chances of achieving a normal life. (Form I-290B).

Unfortunately, the record does not provide objective information to support the statements of the attorney. An attorney cannot testify on behalf of her clients and is not an expert in the development of autistic children. The affidavits of the applicant's wife and her parents do not indicate with specificity the applicant's involvement in the care of his son. The evaluations in the file do not speak to what effect the disruption of relocation or separation from his father would have on the boy's development. There is no information about the type of care that is available for children with autism in Mexico.

While the record does establish that the applicant has a child who has autism and a wife who relies upon him for financial and emotional support and cares deeply about him, it does not establish with any specificity the effect that separation from the applicant or relocation to Mexico with the applicant would have upon the applicant's wife and son. If such information becomes available, there is nothing to preclude the applicant from submitting a motion to reopen or reconsider this decision, but at this time, there is insufficient evidence to sustain the appeal.

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 and children would suffer hardship that was 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 discussing 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.