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U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [redacted] Office: LOS ANGELES (SANTA ANA), CA Date: MAR 27 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles (Santa Ana), 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 Argentina 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 (inflicting corporal injury on a cohabitant and theft). The record indicates that the applicant has a U.S. citizen spouse, two U.S. citizen children and three U.S. citizen stepchildren. The applicant seeks a waiver of inadmissibility in order to reside with his family in the United States.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability. *Decision of the District Director*, dated September 28, 2004.

On appeal, the applicant's spouse asserts that the applicant is the only one who can comfort their asthmatic daughter as he also suffers from asthma and that she wants to keep the family together. *Form I-290B*, dated November 1, 2004.

The record includes, but is not limited to, a psychological evaluation, a statement from the applicant's spouse, birth certificates for the children and the applicant's criminal records. 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. The district director states that the applicant's son and two of the applicant's spouse's children cannot be considered qualifying relatives as these children do not reside with the applicant and his spouse. *See Decision of the District Director*, at 2. These children are qualifying relatives under the statute as the statute does not include a residency requirement. 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.

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 Argentina 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 the 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 Argentina. In regard to the applicant's spouse, the record reflects that she has four children, two of whom reside with her. *Applicant's Spouse's Statement*, at 1, dated September 2, 2004. There is no indication that she has ties to Argentina, family or otherwise. The applicant's spouse states that she has been residing in the United States for almost thirty years and she has built up her business career here. *Id.* The AAO notes that there is no evidence that the applicant and his spouse cannot obtain employment in Argentina. In addition, there is no mention of any significant conditions of health, particularly when tied to an unavailability of suitable medical care in Argentina. Therefore, a review of the record does not evidence extreme hardship to the applicant's spouse if she relocates to Argentina.

In regard to the applicant's children (which include his stepchildren), the record reflects that they were all born in the United States. Three of the children do not live with the applicant and his spouse, rather they live with their other parents. There is no indication that they have ever resided in Argentina or are fluent in Spanish. By default, it would be extreme hardship for these three children to be separated from the parents that they are currently living with in order to live in Argentina. The psychological evaluation describes the two other children, ages twelve and eight and both born in the United States, as being integrated into the United States and lacking fluency in Spanish. 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). There is no indication that they have ever resided in Argentina. Therefore, the record establishes extreme hardship to the two children residing with the applicant and his spouse if they were to relocate to Argentina.

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. In regard to the applicant's spouse, the psychologist states that she is earning approximately $3,000 to $3,500 per month and this salary would not be enough to support her four children. *Psychological Evaluation*, at 5, dated August 25, 2004. However, the applicant's spouse states that only two of her children live with her on a full-time basis. *Applicant's Spouse's Statement*, at 2. The AAO notes that there is no indication that her salary is not enough to support them. The applicant also states that her husband's job prospects in Argentina are almost nonexistent, thereby resulting in serious economic hardship for the family. *Id.* The psychologist states that the applicant's spouse is having feelings of anxiety, irritability and headaches due to her spouse's possible deportation. *Psychological Evaluation*, at 5. The AAO notes that separation entails inherent emotional stress and financial and logistical problems which are common to those involved in the situation. However, the record does not reflect that the applicant's spouse would face extreme hardship if she remained in the United States without the applicant.

In regard to the applicant's children, three of them are not residing with the applicant. The psychologist states that one of them has ADHD and is receiving medicine. *Id.* In addition, the psychologist states that he needs to receive positive reinforcement which the applicant provides and his behavior will regress if the applicant is deported. *Id.* at 6. The AAO notes that there is no evidence to substantiate the claims of this one-time psychological evaluation. In regard to the other two children, the psychologist states that early separation from parents has emotional consequences in the future. *Id.* The psychologist states that the applicant's stepchild who resides with him has been exhibiting learning difficulties and has been referred for an evaluation to confirm Attention Deficit Disorder. *Id.* The applicant's spouse states that their daughter has asthma and the applicant is the best person able to comfort her during asthmatic episodes and separation would be injurious to her well-being. *Applicant's Spouse's Statement*, at 1. The AAO notes that these claims of medical hardship are not substantiated with evidence nor are the applicant's spouse's claims of serious economic hardship. As such, the record does not establish extreme hardship to the applicant's children if they remain in the United States with their mother.

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.

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.