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, CALIFORNIA Date: MAY 12 2006

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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 is married to a lawful permanent resident (LPR), is the father of four U.S. citizen children and the son of a U.S. citizen mother, and is the beneficiary of an approved petition for alien relative filed by his daughter. The applicant was found to be inadmissible to the United States pursuant to § 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 in order to reside with his wife and children 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 qualifying relatives, and the application was denied. On appeal, counsel asserts that district director erred in considering hardship only to the applicant's spouse rather than including his children's hardship in the analysis. Counsel also contends that the evidence establishes that the applicant's spouse and children would suffer extreme emotional and financial hardship should the applicant be removed. Counsel does not submit any additional evidence on 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) states in pertinent part that:

> (h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-
>
> > (1)(A) [I]t is established to the satisfaction of the Attorney General that-
> >
> > > (i) [T]he 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 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 applicant has been arrested several times for activities such as vandalism and reckless driving, and he was convicted of corporal injury on his spouse pursuant to California Penal Code § 273.5(A) on February 8, 2000, less than 15 years prior to this application. He was sentenced to sixteen days in jail and three years of probation. On May 13, 2003, he was also found guilty of driving a vehicle while intoxicated, pursuant to California Vehicle Code § 23152(a) and (b). The applicant is statutorily ineligible for a waiver pursuant to § 212(h)(1)(A) of the Act; however, he is eligible to apply for a waiver of inadmissibility pursuant to § 212(h)(B) of the Act.

The AAO agrees with counsel that the provisions of § 212(h)(B) of the Act allow the consideration of hardship factors pertaining to the applicant's U.S. citizen children as well as to his LPR wife. Nevertheless, the AAO has reviewed the entire record in rendering this decision, and it is concluded that the evidence does not support a finding that the applicant's qualifying relatives would suffer extreme hardship in the event that the applicant is removed.

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 a lawful permanent resident or United States citizen spouse or parent in 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.

Counsel emphasizes that separation from family constitutes a central factor in the extreme hardship determination. In their affidavits submitted with the original I-601 filing, the applicant's wife and eldest daughter express their distress at the prospect of the applicant's removal from the United States. The AAO does not take lightly the emotional impact the applicant's removal would cause his spouse and children; however, the record does not establish that their suffering would be beyond that which is usually found in similar situations. 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 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.

Counsel also contends that it would be very difficult for the applicant's children to move to Mexico, as the educational system in that country is inferior to the U.S. system. The applicant's two youngest children are fifteen and six years of age, and although it is conceivable that their relocation to Mexico could cause them

hardship, there is no evidence on the record that their experience would be extremely negative. There is no evidence on the record that the applicant's qualifying relatives would be unable to make the transition to life in Mexico without suffering extreme hardship.

The totality of the documentation in the record does not establish that the applicant's 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 § 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.