U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: LOS ANGELES, CA Date: NOV 17 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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, CA. 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 Peru 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. The record indicates that the applicant is married to a U.S. citizen and has four U.S. citizen children. The applicant seeks a waiver of inadmissibility in order to reside with his family in the United States.

The district director found that the assertions provided in the affidavits of the applicant's spouse and evidence in the record does not support a finding that the applicant's family members would experience extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. The application was denied accordingly. *District Director's Decision,* dated March 24, 2005.

On appeal, counsel asserts that the director erred factually and abused her discretion in denying the applicant's waiver and disregarding favorable factors in the applicant's case. In addition, counsel asserts that the director's failure to consider extreme hardship to the applicant's step-children was a violation of due process. *Counsel's Brief*, May 21, 2005.

Counsel's assertions regarding a violation of due process will not be addressed by the AAO because Constitutional issues are not within the appellate jurisdiction of the AAO.

The record indicates that the applicant was convicted of Forgery on May 30, 1991 and Prostitution on April 12, 1999.

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.

One of the applicant's convictions took place more than 15 years ago, however the Prostitution conviction occurred less than 15 years ago. Therefore, the waiver application will be reviewed pursuant to section 212(h)(B) of the Act.

A section 212(h)(B) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship the alien himself experiences due to separation is irrelevant to section 212(h)(B) waiver proceedings unless it causes hardship to the applicant's spouse and/or children. The applicant must establish extreme hardship to his qualifying relatives, before the AAO considers the favorable factors in his case and whether a favorable exercise of discretion is warranted. 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (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 to a qualifying relative. The factors include 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

> 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).

The AAO notes that extreme hardship to the applicant's spouse and/or children must be established in the event that they reside in Peru or in the event that they reside in the United States, as they are not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The AAO notes that there is an issue regarding the applicant's step-children and whether they can be considered in determining extreme hardship to the applicant.

Section 101(b)(1) of the Act, defines a "child" as an unmarried person under twenty-one years of age who is-

> (B) a step-child, whether or not born out of wedlock, provided that the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred.

The record contains documentation to show that only two of the applicant's spouse's four children are the applicant's step-children. The record shows that the applicant and his spouse were married on July 3, 2003. The record does not include the spouse's children's birth certificates, however the applicant's 2003 tax return shows two of the spouse's children's birth dates and confirms that these two children were under the age of eighteen at the time the marriage occurred. In addition, the spouse's Affidavit of Support, dated July 15, 2003, shows only two children as living in her residence. Therefore, the record shows that only 2 of the spouse's children are the applicant's step-children and as such only 4 children will be considered in determining extreme hardship.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse and/or children in the event that they reside in Peru. The applicant's wife states in her letter, dated June 9, 2004, that the applicant's two biological children, ages 9 and 12, were born and raised in the United States. She states that they attend school in Irvine, CA and only speak English. The AAO finds that the applicant's children would suffer extreme hardship as a result of relocating to Peru. Relocation to Peru could have a severe impact on the children's education and ability to prosper because they do not know the Spanish language. In *Matter of Kao*, 23 I&N Dec. 45 (BIA 2001), the Board of Immigration Appeals found that adolescents would suffer extreme hardship as a result of relocating to a country where they do not know the culture or the language. Thus, the record does reflect that relocation to Peru will result in extreme hardship to the applicant's children.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse and/or children remain in the United States. In regards to this part of the analysis the applicant submitted a statement from his current wife, a statement from his former wife and 2003 tax returns. The applicant's spouse states in her letter that the applicant's removal would cause her extreme financial hardship. She states that they support eight children and that the applicant provides medical and dental insurance to his two biological children. She states that losing the applicant would have a great psychological impact on her. The applicant's former wife stated in her letter, dated June 11, 2004, that she needs the applicant financially because he pays child support for their two children together and that the children would suffer emotional hardship from being separated from their father.

The AAO finds that the current record does not support a finding that the applicant's children and/or spouse would suffer extreme hardship as a result of the applicant's removal from the United States. The applicant submitted no documentation to support the assertions of his spouse and his former spouse. There is no evidence to show that the applicant's spouse cannot work and provide for her family. There is no documentation to show that the applicant's biological children will not be able to maintain their well-being on their mother's income. There is no documentation showing the income of his former spouse. Finally, there is no documentation or explanation as to the details or extent of the emotional suffering experienced by the

applicant's spouse and/or children. Therefore, the review of the documentation in the record does not establish the existence of extreme hardship to the applicant's spouse and/or children caused by the applicant's inadmissibility to the United States.

U.S. court decisions have repeatedly 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.