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: OCT 03 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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, 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 Indonesia 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 spouse of a lawful permanent resident and the father of two U.S. citizen children. 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 spouse and children.

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 March 16, 2005.

The record reflects that, on July 19, 1985, the applicant entered the United States as a B-2 nonimmigrant visitor. The applicant remained in the United States past his authorized stay and took up unauthorized residence and employment in the United States. On September 30, 1996, the applicant was convicted of Bank and Mail Fraud in violation of 18 U.S.C. §§ 2(b) and 1344(1). The applicant was sentenced to 3 months in jail, 3 months of supervised release and 3 years of probation.

On June 9, 1998, the applicant's spouse [redacted] became a lawful permanent resident of the United States through an approved Petition for Alien Relative (Form I-130) filed on her behalf by her U.S. citizen sibling. On June 29, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on his spouse's approved Form I-130. On June 25, 2003, 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, counsel contends that the applicant's family members would suffer extreme hardship if he were removed from the United States. *See Applicant's Brief,* dated April 12, 2005. In support of the appeal, counsel submitted affidavits from the applicant's spouse and mother-in-law, medical documentation for the applicant's mother-in-law and copies of documents previously provided. The entire record was reviewed and considered in rendering a decision in this case.

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

> (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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (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 . . .

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 bank and mail fraud, a crime involving moral turpitude. Counsel does not contest the district director's determination of inadmissibility.

The record reflects that the applicant and his spouse have a 14-year old daughter and a 12-year old son who are both U.S. citizens by birth. [redacted] is a native and citizen of Indonesia. [redacted] mother, [redacted] is a native and citizen of Indonesia who became a lawful permanent resident in 2000 through an approved Form I-130 filed on her behalf by a U.S. citizen adult child that is not [redacted] with the applicant and his family. The record reflects further that the applicant and [redacted] are in their 40's and [redacted] is in her 80's. There is no indication in the record that [redacted] or the applicant's children suffer from any mental or health problems. There is an indication in the record [redacted] has some health concerns.

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(h) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse, parent, son or daughter of the applicant. Congress specifically did not include hardship to an alien's spouse's mother as a factor to be considered in assessing extreme hardship. Thus, hardship to [redacted] will not be considered in this decision, except as it may affect the applicant's spouse, 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. 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).

[redacted] in her affidavit, contends that she and her children would suffer extreme hardship if she were to remain in the United States without the applicant because she is financially dependent upon the applicant, her mother is financially and physically dependent upon her and her and her children would suffer emotional hardship due to the separation from the applicant. [redacted] states that she is currently employed only on a part-time basis and that, even if she obtained a full-time position it would not be sufficient to support her, her children and her mother. [redacted] states that her mother is sick and elderly and cannot care for her children in her absence should she obtain a full-time job, and that her mother, due to her medical conditions, also requires her assistance at home to care for her. Finally, [redacted] states that the sudden loss of their father and her absence from the home would negatively impact her children's behavior.

Financial records indicate that [redacted] has contributed to the household income in the past. In 2002, [redacted] contributed $15,766 to household income. There is no evidence in the record to suggest that the applicant's spouse is incapable of earning sufficient income to exceed the poverty guidelines for her family. While it is unfortunate that [redacted] would essentially become a single parent, professional after-school childcare may involve an added expense and may not equate to the care of a parent, and her children would essentially be raised in a single-parent environment, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation.

While the medical documentation in the record indicates that [redacted] has been diagnosed with hypertension, hypercholesterolemia, hypothyroid, COPD and osteoporosis and requires monthly follow-ups with her doctor, there is no prognosis for her conditions and there is no indication that [redacted] requires assistance with her daily activities due to her illnesses.

Moreover, it appears that [redacted] has family members in the United States, such as the U.S. citizen sibling who petitioned for her and her mother, who may be able to provide financial, emotional and physical support in the absence of the applicant.

Counsel, [redacted] the applicant, in affidavits or on appeal, do not assert that [redacted] or her children would suffer hardship if they returned to Indonesia with the applicant. The AAO is, therefore, unable to find that [redacted] or her children would experience hardship should they choose to join the applicant in Indonesia. Additionally, the AAO notes that, as a lawful permanent resident and U.S. citizens, the applicant's spouse and children are not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, they would not experience extreme hardship if they remained in the United States without the applicant.

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 spouse and children would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [redacted] **and her children will face no greater** hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse or father 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 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 lawful permanent resident spouse and U.S. citizen children as required under section 212(h) of the Act, 8 U.S.C. § 1186(h). 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 an application for waiver of grounds of inadmissibility under section 212(h) 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.