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

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: BALTIMORE, MD Date: DEC 27 2007

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Inadmissibility Pursuant to Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h).

ON BEHALF OF PETITIONER:

[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, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico. He was found to be inadmissible to the United States under 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) as an alien convicted of a crime involving moral turpitude. The applicant is the beneficiary of an approved Immigrant Petition for Alien Worker (Form I-140) and presently seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may adjust his status to lawful permanent resident of the United States.

The district director concluded that the applicant was inadmissible based on his arrest and conviction for Theft: Less $300 Value, a crime involving moral turpitude that resulted in a fine and 12 months' probation. After a thorough analysis and consideration of the evidence submitted by the applicant in support of his Form I-601, Application for Waiver of Grounds of Inadmissibility, the director found that the applicant had not established that his inadmissibility would result in extreme hardship to his U.S. citizen spouse or child. *See Decision of the District Director*, dated June 22, 2007.[1]

On appeal, counsel contends that the director erred in finding the applicant inadmissible because the applicant was never convicted of a crime. Counsel maintains that the applicant received "probation before judgment." According to counsel, "probation before judgment" does not include an adjudication of guilt, and the applicant was not subject to any punishment, penalty or restraint on his liberty. Alternatively, counsel claims that refusal to admit the applicant to the United States would cause extreme hardship to the applicant's spouse and children. The appeal is accompanied by a brief, a copy of the evidence previously submitted to the director, a copy of the applicant's 2006 joint tax return, and a health insurance document.

Section 101(a)(48) of the Act, 8 U.S.C. § 1101(a)(48), defines the term "conviction" as "a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restrains on the alien's liberty to be imposed.

[1] The AAO notes that the director's decision erroneously cites section 212(i) of the Act as the applicable law in this case. As noted below, section 212(h) of the Act provides the waiver of criminal grounds of inadmissibility. The AAO notes nonetheless that the extreme hardship analysis is the same under either provision, and therefore the error is harmless. The AAO further notes that the director's decision at page 4 refers to "United States nation," when it is clear from the context that he intended to refer to "United States citizen." The AAO finds this typographical error also to be harmless. In any event, the AAO reviews this matter *de novo*.

Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), states, in pertinent part:

(i) Except as provided in clause (ii), any 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 . . . is inadmissible.

Section 212(h) of the Act, 8 U.S.C. § 1182(h), provides, in pertinent part:

(h) The [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

(1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that –
(i) … the 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 [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 record before the AAO contains a court certified criminal disposition indicating that the applicant pled guilty to Theft: Less $300 Value on January 4, 2004, and was ordered pay a $195 fine and serve probation until February 4, 2004. The AAO finds that the applicant was convicted for immigration purposes because he pled guilty and he was required to pay a fine and was on probation as a result. Consequently, the AAO finds that the applicant is inadmissible under section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A).

Having found that the applicant is inadmissible, the AAO must now address the issue of extreme hardship to the applicant's U.S. citizen spouse and child. Hardship to the applicant himself is not a permissible consideration under the statute.

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. 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).

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 or child would face extreme hardship if the applicant is refused admission. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is refused admission or removed from the United States. Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. 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). 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).

In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant's wife or child rises to the level of extreme. The AAO notes that the applicant has a U.S. citizen wife and child, and that his wife was pregnant when this appeal was filed. The applicant's spouse states in her declaration that she relies solely on her husband for financial support, as she has not worked in three years. She further states, and documents in the record confirm, that the couple bought a $260,000 home in December 2006. The applicant's wife further states that her family would suffer greatly if they were separated, emotionally and financially. She explains that she has had difficult pregnancies in the past, including a still born birth. She indicates that she is very close to the applicant, as is their 3-year old son. She states that she cannot relocate to Mexico, she has no family ties there or good prospects for maintaining her standard of living. If the applicant relocated to Mexico, and she remained in the United States with their children, he would not be able to maintain them either. The applicant's wife's parents and brother, and a friend also submitted declarations indicating that the applicant's departure to Mexico would cause hardship to the entire family.

The AAO notes that there is no evidence that the applicant or his family members suffer from any chronic or serious medical conditions. There is also no evidence regarding the applicant's spouse's unemployment or previous occupation. The record also does not include any evidence suggesting that the applicant's spouse's parents, relatives, or friends cannot provide financial and emotional support if she decided to remain in the United States with her children. In that regard, the AAO notes that, as U.S. citizens, the applicant's spouse and child are not required to reside outside of the United States as a result of denial of the applicant's waiver request. The AAO further notes that the applicant's spouse's concerns regarding the standard of living in Mexico are common to other individuals facing similar circumstances, and do not rise to the level of "extreme hardship." *See Ramirez-Durazo v. INS,* 794 F.2d 491, 499 (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").

The AAO has considered the applicant's spouse's decision to remain in the United States and the hardship that may ensue due to her and the children's separation from the applicant. While the AAO has carefully considered the impact of the separation resulting from the applicant's inadmissibility, a waiver is nevertheless not to be granted in every case where separation from family is at issue. *See Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) (stating that "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").

The AAO has evaluated the applicant's spouse's hardship claims individually and in the aggregate. Although the AAO acknowledges the applicant's spouse's claims that she would experience hardship if she and the children are separated from him, the AAO finds that their hardship is typical for any person in their circumstances and does not rise to the level of "extreme" as required by the statute. The AAO finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse or child as required under section 212(h) of the Act, 8 U.S.C. §§ 1182(h).

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility rests 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.