U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: HARLINGEN, TEXAS Date: DEC 27 2007

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 waiver application was denied by the District Director, Harlingen, Texas, 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 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 seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his permanent resident wife.

The district director initially concluded that the applicant failed to show that he has a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the District Director*, dated May 25, 2005. The applicant filed a motion to reconsider the application with evidence that his wife is a permanent resident of the United States. *Motion to Reconsider*, filed June 23, 2005. The district director granted the motion and reopened the proceedings based on a finding that the applicant established that his wife is qualifying relative. *Decision on the District Director on Motion*, dated June 26, 2006. However, the district director concluded that the applicant failed to establish that extreme hardship would be imposed on his wife and again denied the application. *Id.*

On appeal, counsel for the applicant contends that the applicant's wife will suffer extreme hardship if the applicant is prohibited from remaining in the United States, and that the district director erred in finding otherwise. *Statement from Counsel on Form I-290B*, dated July 6, 2006. Counsel asserts that the district director placed undue influence on the fact that the applicant's wife is receiving medical treatment in Mexico, and that the district director did not properly evaluate conditions in Mexico or the applicant's wife's potential loss of consortium. *Id.*

The record contains statements from the applicant and his wife; a copy of the applicant's wife's permanent resident card; documentation in connection with criminal action against the applicant; documentation regarding the applicant's wife's medical care; a deed reflecting that the applicant and his wife purchased land in a subdivision, and; evidence of the applicant's employment. The entire record was reviewed and considered in rendering this decision.

It is noted that counsel indicated on Form I-290B that he would send a brief and/or evidence to the AAO within 30 days of filing the appeal. The appeal was filed on July 19, 2006. However, as of November 20, 2007, the AAO had received no further documentation or correspondence from the applicant or counsel. On November 20, 2007, the AAO sent a facsimile to counsel with notice that a brief or additional evidence had not been received, and affording five days in which to provide a copy of any missing filing. As of the date of this decision, the AAO has not received a response to the facsimile, and the record is deemed complete.

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

> (A)(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) 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) [or] (B) . . . of subsection (a)(2)
> . . . if -
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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 [now the Secretary of Homeland Security (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 reflects that the applicant pleaded guilty to the charge of Forgery of a Government Instrument (third degree) in Texas on May 11, 1995. The applicant received a three year probated sentence, deemed "deferred adjudication." He satisfied the terms of his probation on December 13, 1996 and his probation was terminated. It was determined that the applicant pleaded guilty to a crime involving moral turpitude, and thus he was found inadmissible under section 212(a)(2)(A)(i)(I) of the Act.[1] The applicant does not contest his inadmissibility on appeal.

The AAO notes that section 212(h)(1)(B) 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. Hardship the applicant himself experiences due to his inadmissibility is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's permanent resident wife. *Id.* If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act.

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.

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[1] It is noted that third degree forgery under Texas Penal Code section 12.34(a) carries of potential sentence of two to 10 years of incarceration, thus the applicant's guilty plea does not qualify for the petty offense exception found in section 212(a)(2)(A)(ii) of the Act. *See* Texas Penal Code § 32.21(e).

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 applicant asserted that his wife will suffer extreme hardship should he be prohibited from remaining in the United States. *Statement from the Applicant*, undated. The applicant stated that his wife has had health problems that have resulted in her inability to have children. *Id.* at 1. The applicant indicated that he and his wife would like her to receive medical treatment in the United States to assist them in having a child. *Id.* The applicant provided that denial of the present waiver application would result in his separation from his wife. *Id.*

The applicant's wife explained that she and the applicant share a close relationship, and that the applicant helps provide economic support for them. *Statement from the Applicant's Wife*, undated. The applicant's wife explained that she and the applicant wish to reside in the United States and purchase a home. *Id.* She indicated that the applicant would be unable to find a job in Mexico, and thus he would not be able to establish a good household. *Id.* In a separate statement, the applicant's wife indicated that she would be unable to continue fertility treatments without the applicant's economic support in the United States. *Second Statement from the Applicant's Wife*, undated. The applicant's wife emphasized the emotional suffering she would endure if she and the applicant are deprived of the opportunity to start a family. *Id.*

The record contains a letter from a doctor in Mexico who attested that the applicant's immigration difficulties are hindering the applicant's wife having treatment and insemination exams in Mexico. *Letter from Dr.* [redacted] dated March 16, 2005. The record further contains medical documentation that reflects that the applicant's wife has undergone procedures related to a cyst and fertility assessment.

Upon review, the applicant has not established that his wife will experience extreme hardship if he is prohibited from remaining in the United States. The applicant and his wife explained that they wish for the applicant's wife to undergo medical care in the United States for the purpose of assisting them with having a child. They imply that the applicant's presence in the United States is required in order for her to receive such treatments, in part due to the applicant's need to work in the United States to earn sufficient funds for the treatments. However, the applicant has not shown that his wife would be unable to obtain desired fertility treatments should the applicant depart the United States.

The applicant's wife is currently receiving treatment in Mexico. While Dr. [redacted] indicated that the applicant's immigration difficulties are hindering the applicant's wife's treatment, he did not explain why. As the treatment is being conducted in Mexico, it does not appear that the applicant's presence in Mexico would interfere with his wife continuing treatment there. The applicant has not described any treatments that his wife wishes to obtain in the United States that are not available in Mexico.

The applicant's wife suggests that the applicant's lack of access to employment in the United States would present economic hardship to her, and it would serve as a hindrance to financing fertility treatment. However,

the applicant has not submitted sufficient evidence to explain his and his wife's current financial position. Specifically, the applicant has not presented evidence to show whether his wife works, and if so, what is her income. The applicant has not submitted an account of his regular household expenses such that the AAO can assess whether the applicant's wife can meet her economic needs in the applicant's absence. The applicant has not submitted documentation to show the anticipated expenses of the fertility treatment his wife plans to receive. While the record reflects that the applicant and his wife purchased two lots in a subdivision, the applicant has not submitted documentation to show whether they make monthly payments on the lots, or whether the lots have significant value and could be sold to fund other needs. Accordingly, the applicant has not provided adequate documentation to show that his relocation outside of the United States would cause significant financial hardship to his wife, or that it would foreclose her access to fertility treatment.

The applicant's wife expressed that she will experience significant emotional hardship if she is separated from the applicant. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant should she remain in the United States. However, her situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. 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.

The applicant's wife is a native of Mexico. She became a permanent resident in the United States on April 23, 1991. The applicant has not explained how long his wife has resided in the United States, or whether she has other family members or connections here. Nor has the applicant described his wife's ties to Mexico, such as whether she has family there, whether she has employment opportunities there, or whether she owns property in the country. As a native of Mexico, it is likely that the applicant's wife is fluent in Spanish and is comfortable with Mexican customs and culture. Thus, the applicant has not shown that his wife would experience significant hardship should she relocate to Mexico with the applicant.

The AAO acknowledges that permanent residence in the United States is a significant benefit, and that forgoing this benefit to return to Mexico represents emotional hardship for the applicant's wife, as she has expressed that she wishes to continue to build a life in the United States. However, the applicant has not shown that returning to Mexico constitutes extreme hardship for his wife.

Based on the foregoing, the applicant has not shown that, should he be prohibited from remaining in the United States, his wife will suffer emotional hardship that is unusual or beyond that which would normally be expected upon the deportation of a spouse. The applicant has not established that his departure from the United States will deprive his wife of access to medical or fertility treatment. The applicant has not shown that his absence from the United States will cause his wife economic hardship that rises to the level of extreme hardship. Thus, the applicant has not established that his wife will experience extreme hardship if he

is prohibited from remaining in 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(h) 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.