identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

U.S. Citizenship and Immigration Services

412

PUBLIC COPY

[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: JAN 30 2007

IN RE:

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 District Director, Los Angeles, California, 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 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 crimes involving moral turpitude. The applicant is the son of a lawful permanent resident parent and the spouse and father of U.S. citizens. 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 mother, 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 November 18, 2004.

The record reflects that, on October 27, 1988, the applicant was convicted of auto theft in violation of section 10851(a) of the California Vehicular Code (CVC). The applicant was sentenced to 2 years of probation and 9 days in jail. On May 31, 1990, the applicant was convicted of unlawful sexual intercourse with a minor in violation of section 261.5 of the California Penal Code (CPC). The applicant was sentenced to one year in jail, which was suspended in favor of 180 days in jail and 3 years of probation. On February 16, 1993, the applicant was convicted of willful infliction of corporal injury on a spouse, cohabitant, or parent of the perpetrator's child, in violation of section 273.5(a) of the CPC.

On April 1, 2004, 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 district director abused her discretion by failing to consider all the relevant factors regarding extreme hardship to the applicant's wife, children and mother. *See Attachment to Form I-290B,* dated December 13, 2004. In support of the appeal, counsel submitted the referenced attachment to Form I-290B 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.

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

> (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

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 –
> . . . .
>
> > (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 convictions for auto theft, unlawful sexual intercourse with a minor and willful infliction of corporal injury on a spouse, cohabitant, or parent of the perpetrator's child, crimes involving moral turpitude. Counsel does not contest the district director's finding of inadmissibility.

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.

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).

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).

The record reflects that, on March 22, 1996, the applicant married his spouse, [redacted] (Ms. [redacted] Ms. [redacted] is a native of Mexico who became a lawful permanent resident in 1990 and a naturalized U.S. citizen in 1999. The applicant and Ms. [redacted] have a 14-year old daughter and a 12-year old son who are both U.S. citizens by birth. The applicant's mother, [redacted] (Ms. [redacted] is a native and citizen of Mexico who became a lawful permanent resident in 1990. The record indicates that the applicant and Ms. [redacted] are in their 30's, Ms. [redacted] is in her 50's, and Ms. [redacted] may have some health concerns.

The applicant, in his affidavit, asserts that his mother will suffer extreme hardship if she were to remain in the United States without the applicant. The applicant states that Ms. [redacted] depends on him emotionally and financially. He states that Ms. [redacted] is very close to him and that she has diabetes and needs his help and support. He states that he has eleven siblings, four of which are under the age of 21.

There is no evidence in the record to confirm that the applicant's mother is financially dependent upon the applicant or unable to support herself and her family without the financial assistance of the applicant. Moreover, the record reflects that Ms. [redacted] has other family members in the United States, such as her other adult children, who may be able to provide her with financial and physical assistance in the absence of the applicant. The record does not contain any evidence to suggest that Ms. [redacted] would suffer a financial loss that would result in extreme hardship to her if she had to support herself without the income that may be provided by the applicant, even when combined with the emotional hardship discussed below.

There is no evidence in the record to confirm that the applicant's mother suffers from a mental or physical illness that would cause her hardship beyond that commonly suffered by aliens and families upon removal. Although the applicant states his mother has diabetes, he does not indicate what effect, if any, her medical condition has on her ability to function. Finally, the record reflects that Ms. [redacted] has other family members in the United States, such as her other adult children, who may be able to provide her with emotional or physical support in the absence of the applicant.

The applicant, in his affidavit, asserts that his wife and their children will suffer extreme hardship if they remain in the United States without him because he is the main financial provider for the family and his wife works on a part-time basis. Ms. [redacted] in her affidavit, states that she will lose the man with whom she has shared so many years and who is the love of her life. She also states that her children will lose their father, whom they love, respect and need in their lives. She states that she and the children will be affected emotionally, psychologically and financially. She states that she works part-time and picks the children up from school and that she would be unable to afford a babysitter, pay the bills and make the house payment without the applicant's income.

While the AAO notes that Ms. [redacted] may be unable to pay the house payment and she may have to lower the family's standard of living, the record does not contain any evidence to suggest that Ms. [redacted] would be unable to find full time employment sufficient to support herself and her two children without the financial support of the applicant. Further, although it is unfortunate that Ms. [redacted] would essentially become a single parent and professional childcare may be an added expense and not equate to the care of a parent, this is also not a hardship that is beyond those commonly suffered by aliens and families upon removal. Moreover, the record reflects that Ms. [redacted] has family members in the United States, such as her mother and adult siblings, who may be able to assist her financially or physically in the absence of the applicant. The record does not support a finding of financial loss that would result in an extreme hardship to Ms. [redacted] and her children if Ms. [redacted] had to support herself and her children without additional income from the applicant, even when combined with the emotional hardship described below.

There is no evidence that Ms [redacted] or the applicant's children suffer from a physical or mental illness that would cause them to suffer hardship beyond that commonly faced by aliens and families upon removal. While the AAO acknowledges Ms. [redacted] concerns that her children will essentially be raised in a single-parent environment, this is not a hardship that is beyond those commonly suffered by aliens and families upon removal. Additionally, the record indicates that Ms. [redacted] has family members, such as her mother and adult siblings, in the United States who may be able to assist her physically or emotionally in the absence of the applicant.

Counsel, the applicant and Ms. [redacted] do not assert that the applicant's mother would suffer extreme hardship if she were to accompany the applicant to Mexico. The AAO is, therefore, unable to find that Ms. [redacted] would experience hardship should she choose to join the applicant in Mexico. However, the AAO notes that, as a lawful permanent resident, the applicant's mother is not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, Ms. [redacted] would not experience extreme hardship if she remained in the United States without the applicant.

The applicant, in his affidavit, asserts that his wife and their children will suffer extreme hardship if they were to accompany the applicant to Mexico because the children were born and raised in America, both the children and his wife are accustomed to life in America, all of their family members reside in the United States, the economy in Mexico would make it difficult for him and his wife to support themselves and their children, and both his wife and children would be unable to pursue the same opportunities they would have in the United States.

As discussed above, there is no evidence in the record to suggest that Ms. [redacted] or the applicant's children suffer from a physical or mental illness for which they would be unable to receive treatment in Mexico. There is no evidence in the record to suggest that the applicant and Ms. [redacted] would be unable to find *any* employment in Mexico. While the hardships faced by Ms. [redacted] with regard to adjusting to a new culture, economy, environment, separation from friends and family and an inability to pursue the same opportunities she would have in the United States are what would normally be expected with any spouse accompanying a removed alien to a foreign country, when combined with the children's

adjustment to a new culture, and environment they would rise to level of extreme hardship. *Matter of Kao & Lin,* 23 I&N Dec. 45 (BIA 2001). However, the AAO notes that, as 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, Ms. [redacted] and the applicant's children 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 mother, spouse and children would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that Ms. [redacted] Ms. [redacted] and the applicant's children will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a son, 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 mother, U.S. citizen spouse, and U.S. citizen children as required under section 212(h) of the Act, 8 U.S.C. § 1186(h). The AAO notes that, even if the applicant had established that his family members would suffer extreme hardship, the applicant would not merit a waiver as a matter of discretion. The record reflects that the applicant admitted to unlawfully having sexual intercourse with a minor, specifically an eleven-year old, while he was age 19. The applicant would not merit a waiver as a matter of discretion due to the particular seriousness of the applicant's conviction for unlawful sex with a minor.

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.