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U.S. Citizenship and Immigration Services

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[redacted]

H6 MAY 02 2007

FILE: [redacted] Office: LOS ANGELES, CA Date:

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, Los Angeles, California, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be dismissed.

The applicant [redacted] 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 committed a crime involving moral turpitude. The applicant is the wife of a U.S. citizen husband and the mother of U.S. citizen children. She seeks a waiver of inadmissibility under section 212(h) of the Act.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on qualifying relatives, and denied the Application for Waiver of Excludability (Form I-601). *Decision of the District Director*, dated April 21, 2005.

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 may, in his discretion, waive the application of subparagraphs (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 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 the following:

1) November 6, 2002 - a plea of *nolo contendere* in violation of Cal. Penal Code section 666, petty theft;
2) December 4, 1995 - a violation of Cal. Penal Code 460.2, burglary (second degree), Cal. Penal Code 148.9(A), false identification to specific peace officers[1] , and Cal. Penal Code 484/488, theft/petty

[1] It is unclear as to whether a conviction under Cal. Penal Code 148.9(a) is a crime of moral turpitude. In *Matter of Katsanis*, 14 I&N Dec. 266, 268 (BIA 1973), the Board of Immigration Appeals (BIA) stated that "[m]oral turpitude attaches to crimes where fraud is an ingredient." (Citations omitted). Moreover, in *Matter of Espinosa*, 10 I&N Dec. 98, 99-100 (BIA 1962), no moral turpitude was found where it was unclear from the record whether the respondent pled guilty to fraudulent conduct (the required mens rea conduct for a moral turpitude finding) or to false conduct (which did not establish moral turpitude).

theft; and

3) September 6, 1994 - a violation of Cal. Penal Code 484(A), theft of property.

The district director found that the applicant committed a crime involving moral turpitude, and was therefore inadmissible under the Act. The applicant filed a waiver of inadmissibility in accordance with section 212(h) of the Act which the director determined failed to establish the statutory requirement of extreme hardship to a qualifying relative.

On appeal, counsel does not dispute the director's finding of inadmissibility based on the applicant's conviction of a crime of moral turpitude. Counsel states that the applicant is the mother and caretaker of four U.S. citizen children. Counsel states that the applicant has been married for 15 years to the petitioner, who financially supports the children, including his two stepsons.

The AAO will address in this proceeding whether the applicant has established that she should be granted a waiver of inadmissibility under section 212(h) of the Act. The entire record has been reviewed in rendering this decision.

Section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission resulting from inadmissibility under 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. Only where there is great actual or prospective injury to the qualifying relative(s) will the bar be removed. "Extreme hardship" to an alien himself cannot be considered in determining eligibility for a section 212(h) waiver of inadmissibility. *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968).

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 BIA set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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

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Cal. Penal Code 148.9(a) provides that:

> Any person who falsely represents or identifies himself or herself as another person or as a fictitious person to any peace officer listed in Section 830.1 or 830.2, or subdivision (a) of Section 830.33, upon a lawful detention or arrest of the person, either to evade the process of the court, or to evade the proper identification of the person by the investigating officer is guilty of a misdemeanor.

The statute contains no element of fraud in its definition and based on the reasoning set forth by the Board, the applicant's conviction pursuant to Cal. Penal Code 148.9(a) does not constitute a crime involving moral turpitude.

conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I & N Dec. 880, 882 (BIA 1994).

The AAO will now apply the *Cervantes-Gonzalez* factors to the present case to the extent they are relevant in determining extreme hardship to the applicant's husband and children. It is noted that extreme hardship to the applicant's qualifying relative must be established in the event that he or she accompanies the applicant; and in the alternative, that he or she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request. The qualifying relative here is the applicant's husband and children.

The applicant married the petitioner on December 7, 1990. *License and Certificate of Confidential Marriage, County of Los Angeles, Registrar-Recorder.* The record contains birth certificates of the applicant's four American-born children, [redacted] born on October 30, 2003; [redacted] born on February 18, 1987; and [redacted] born on April 19, 1991; and [redacted] born on October 27, 1985.

The applicant's husband makes the following statements in two letters (dated November 17, 2004 and April 28, 2005). He met his wife 15 years ago and he still loves her. She gave him two wonderful daughters and 15 wonderful years. She is a stay-at-home mother who takes care of four children. He raised her two boys and helped support them; they are now grown up and have left the home. He works all day, mostly six days a week. When he arrives home, he finds his wife has taken care of the house, the children and their homework, and all errands and greets him with a smile. He does not know what he would do without her; she is his moral support. The children need her. His wife made mistakes in her life, but she is a wonderful wife and mother. His wife is ashamed of what she has done and has promised never to do it again.

The applicant's husband earns $37,853.53 as a truck driver with [redacted]. *Form W-2 for 2003; Letter from [redacted], dated November 30, 2004.*

The record contains letters from the applicant's children and her mother in-law. The letter from [redacted] states that her mother is a wonderful person who does most of the house work. She would be devastated if her mother left the family. She really loves her mother. The letter from [redacted] states that his mother is the most important person in his life. His mother helped him through a very difficult time when a close friend died. He needs his mother and he loves her. The letter from [redacted] states that he does not know what he would do without his mother, who he loves and is a major part of his life. The letter from the mother in-law states that the applicant is a great woman who has been by her son's side for nearly 20 years. She and her son would suffer terribly if separated from the applicant.

A review of the documentation in the record, when considered individually and in the aggregate, reflects that the applicant has not demonstrated statutory eligibility for waiver of admissibility under section 212(h) of the Act.

The record does not establish that the applicant's family would endure extreme economic hardship if the waiver of inadmissibility is not granted and they remain in the United States. The submitted evidence reflects that the applicant's husband, who is 36 years old, provides the sole financial support of the family, earning $37,853.53 as a truck driver. The applicant cares for the children (ages 3 and 16). The applicant's two sons, ages 20 and 22, no longer live at home. *Statement from the Applicant's Husband, dated November 17, 2004.* Based on the evidentiary material submitted, the applicant's family would not endure extreme economic hardship if they chose to remain in the United States.

U. S. courts have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, the fact that the applicant has American born children is not sufficient in itself to establish extreme hardship. The general proposition is that the mere birth of a deportee's child who is a U.S. citizen is not sufficient to prove extreme hardship. The BIA has held that birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa,* 19 I&N Dec. 130 (BIA 1984). In *Marquez-Medina v. INS,* 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit has stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit has found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. *Lee v. INS,* 550 F.2d 554 (9th Cir. 1977). In a per curiam decision, *Banks v. INS,* 594 F.2d 760 (9th Cir. 1979), the Ninth Circuit found that an alien, illegally within this country, cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

Furthermore, in *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS,* 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). The Ninth Circuit in *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.

The AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of separation from a loved one and has taken this into consideration. However, it finds that the situation of the applicant's husband and children, if they remain in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship. The record before the AAO is

insufficient to show that the emotional hardship that will be endured by the [redacted] family, while separated from the applicant, is unusual or beyond that which is normally to be expected upon deportation.

The AAO finds that the record has no evidence that would establish that the applicant's family would suffer extreme hardship if they joined her in Mexico.

The conditions of Mexico, the country to which the [redacted] family will join the applicant, are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

A significant reduction in the standard of living is not by itself a ground for relief. *Ramirez-Durazo v. INS,* 794 F.2d 491 (9th Cir. 1986). Economic hardship claims of not finding employment in Mexico and not having proper medical care benefits do not reach the level of extreme hardship. *Marquez-Medina v. INS*, 765 F.2d 673, 677 (7th Cir. 1985). "Second class" medical facilities in foreign countries are not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), the Ninth Circuit upheld the BIA's finding that hardship in finding employment in Mexico and in the loss of group medical insurance did not reach "extreme hardship."

However, in *Carrete-Michel v. INS*, 749 F.2d 490, 493 (8th Cir. 1984), the court stated that the BIA improperly characterized as mere "economic hardship" [redacted] claim, which was supported by evidentiary material, that he would be completely unable to find work in Mexico. The court stated:

> Although economic hardship by itself cannot be the basis for suspending deportation, *Immigration and Naturalization Service v. Wang,* 450 U.S. at 144, 101 S.Ct. at 1031, we agree with the Ninth Circuit that there is a distinction between economic hardship and complete inability to find work. *Santana-Figueroa,* 644 F.2d at 1356-57."

In the case at hand, [redacted] makes no claim of economic hardship stemming from an inability to find any work in Mexico. There is no hardship claim arising from significant conditions of health to a member of the [redacted] family.

The [redacted] family includes a pre-school three-year old daughter and a daughter who is nearly sixteen years old. In *Ramirez-Durazo, supra* at 498, the Ninth Circuit stated that "[t]he disadvantage of reduced educational opportunities for the children was also considered by the BIA and found insufficient to establish "extreme hardship." It also stated that "[a]lthough the citizen child may share the inconvenience of readjustment and reduced educational opportunities in Mexico, this does not constitute "extreme hardship." In *Banks v. INS*, 594 F.2d 760, 762 (9th Cir. 1979), the Ninth Circuit states that "[w]hile changing schools and the language of instruction will admittedly be difficult, [redacted] herself admitted that [redacted] would be able to learn the German language. The possibility of inconvenience to the citizen child is not itself sufficient to constitute extreme hardship under the statute."

Here, there is no evidence that the [redacted] children will not be able to transition to life in Mexico. There is no evidence that their eldest daughter will have difficulties transitioning into Mexican schools. The youngest daughter is still of pre-school age and thus less susceptible to the disruption of education and change of language involved in moving to Mexico.

The record reflects that the [redacted] family would sever ties with family members if they joined the applicant in Mexico. The BIA in *Matter of Shaughnessy,* 12 I & N Dec. 810, 813 (BIA 1968) stated that separation from family does not constitute extreme hardship unless combined with more extreme impact.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in deportation has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(2)(A) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.