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

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[redacted]

FILE: [redacted] Office: PHOENIX, AZ Date: OCT 30 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: Self-represented

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, Phoenix, Arizona, 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 El Salvador who was found to be inadmissible to the United States pursuant to section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h), for having been convicted of a crime involving moral turpitude. The applicant has two U.S. citizen children and a naturalized U.S. citizen mother and seeks a waiver of inadmissibility in order to reside in the United States with his children and mother.

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 May 24, 2006.

The record reflects that, on November 4, 1996, the applicant's mother, [redacted] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on February 11, 1997. On April 28, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485), based on the approved Form I-130. On July 2, 2003, the applicant was arrested and charged with embezzlement and burglary in Las Vegas, Nevada. The applicant was found guilty of theft in violation of section 205.0832 of the Nevada Revised Statutes (NRS) and, on July 22, 2004, received a suspended sentence in favor of probation not to exceed a period of five years and restitution in the amount of $102,941.35. On May 23, 2006, 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 mother and children.

On appeal, the applicant contends that he has been living in the United States for 18 years and all of his relatives are in the United States. *See Form I-290B,* dated June 28, 2006. In support of the appeal, the record contains the referenced Form I-290B; a brief in support of appeal; statements from the applicant's mother, ex-wife, sister and minister; letters from the applicant's children's teachers; a letter from the applicant's daughter; and divorce and custody records. 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 –
>
> . . . .

> (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 conviction for theft, a crime involving moral turpitude. The applicant 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).

Since the applicant's mother and children are U.S. citizens and are not required to reside outside the United States as a result of the denial of the applicant's waiver, extreme hardship must be established whether they reside in the United States or El Salvador.

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 [redacted] is a native of El Salvador who became a lawful permanent resident in 1990 and a naturalized U.S. citizen in 1996. The applicant has a 13-year old daughter and a ten-year old son who are both U.S. citizens by birth. The applicant is in his 30's and [redacted] is in her 50's.

The applicant has submitted a statement from his U.S. citizen mother who asserts that it would be an extreme emotional strain on her if her son were to be removed from the United States. She reports that the applicant takes care of her family and makes sure they are economically stable and healthy. She also indicates that he assists her in anything she wishes to do and has helped her financially and emotionally.

The applicant's sister, in her letter, asserts that the applicant's mother will be unable to work in a few years as a housekeeper. She asserts that the applicant's mother does not have a pension or medical insurance. She asserts that the applicant's mother will have to go on welfare if the applicant is removed from the United States and that the applicant's mother had hoped that he would care for her when she stopped working.

There is no evidence in the record, besides the applicant's sister's letter, to establish that the applicant's mother will soon be unable to work and support herself. Accordingly, the record does not demonstrate that the applicant's mother would be dependent on welfare in the absence of the applicant. Going on record without supporting documentary evidence is not sufficient to meet the burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO also notes that the applicant's mother, in her own statement, did not raise these concerns, although she did indicate that the applicant assisted her family financially.

There is no evidence in the record that the applicant's mother suffers from a physical or mental illness that would cause her to suffer hardship beyond that commonly suffered by aliens and families upon deportation. While the AAO acknowledges that [redacted] would experience anxiety and depression as a result of being separated from her son, the record does not establish that these reactions constitute hardships that are beyond those commonly suffered by families upon removal. Additionally, the record reflects that [redacted] has family members in the United States, such as her other children, who may be able to assist her physically and emotionally in the absence of the applicant.

The applicant, on appeal, asserts that his children are already suffering hardship because the prospect of his removal from the United States is affecting them in school. He states that his daughter is stressed and depressed because she understands that the denial of the waiver would result in her father's removal from the United States. He states that, even though he is divorced from his children's mother, the family maintains a good relationship and it would be very hard for his children to grow up apart from their father. He states that his children have already gone through the divorce of their parents and that a permanent separation from him would destroy their lives. He asserts that his children would also be affected economically because he currently pays $346 per month in court-ordered child support. He asserts that his ex-spouse's salary of $1,600 per month is not enough to cover the expenses and she would have to rely on welfare to support the children because he would be unable to earn enough in El Salvador to pay child support.

The applicant's ex-spouse, [redacted] in her statements, asserts that she and the applicant have joint custody of their children. She states that the applicant has always paid her child support in the amount of $346 per month and also buys shoes and clothing for the children when he can. She states that she only makes $1,600 per month and does not possess the skills or education to find employment that would provide her with a better income. She states that her children are suffering because the applicant's waiver was denied and they think about not seeing their father. She states that she cannot replace the love, patience and time that the applicant offers his children. She states that she needs the applicant to guide her children in their

lives and to provide them with a good education. She states that the children will never see their father again if he is removed from the United States because she does not have the money to send them to visit the applicant in El Salvador. She states that she does not have the money to pay for long distance calls to El Salvador.

The applicant's children's teachers, in their letters, state that they feel the removal of the applicant would have a detrimental effect on the development of his children who have shown great academic aptitude. They state that they have seen the distress that the possible removal of the applicant has caused the applicant's daughter. They state that the children desperately need the applicant to care for them and that they deserve a father who is there to support them.

The applicant's daughter, in her letter, states that the applicant is her best friend and she would feel crushed if the applicant had to leave the United States. The applicant's daughter states that her grades in school have gone down because she is worried about her father's potential removal from the United States and that she is not getting along with her mother. She states that she is able to go to her father's house and talk to him about her problems.

The record reflects that the applicant pays child support in the amount of $346 each month. However, the applicant submitted no evidence on the Salvadoran economy or labor market that would establish that he would be unable to earn sufficient income in El Salvador to sustain his current level of child support. Accordingly, the record does not establish that the removal of the applicant would result in a lowered standard of living for his children.

While the applicant, his ex-spouse and the children's teachers indicate that the children are distressed by the prospect of the applicant's removal from the United States, the evidence does not establish that their distress is beyond the normal and expected emotional hardship of those separated from loved ones. While it is unfortunate that the applicant's children would be separated from their father and would suffer distress and anxiety as a result of that separation, there is no evidence in the record, e.g., an evaluation from a licensed health care professional, to establish that they suffer from a physical or mental illness that would cause them to suffer hardship beyond that commonly suffered by families upon removal. Finally, the children have family members in the United States, who may be able to support them physically and emotionally in the absence of the applicant.

The applicant, the applicant's sister, [redacted] and the applicant's children do not assert that either the applicant's children or his mother would suffer extreme hardship if they were to accompany him to El Salvador, although the applicant's mother indicates in her statement that her grandchildren do not read, write or speak Spanish very well. The AAO also notes that the joint custody arrangement between the applicant and his ex-wife prevents the removal of the children from the state of Nevada by one parent without the written consent of the other. The applicant has not, however, provided any evidence to demonstrate that his ex-wife would refuse to allow the children to relocate to El Salvador with their father. Accordingly, the AAO is unable to find that [redacted] or the applicant's children would experience hardship should they choose to join the applicant in El Salvador. Additionally, the AAO notes that, as citizens of the United States, the applicant's children and mother 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 children and mother would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that the applicant's children and mother will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a father or son 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, which meets the standard in section 212(h) of the Act, 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 U.S. citizen children and mother 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.