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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: ATLANTA, GA Date: MAY 27 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Ellen C. Johnson

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Atlanta, Georgia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of the St. Lucia who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i), for having been convicted of a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to live with his U.S. citizen wife and child in the United States.

The district director found that the applicant had failed to provide documents or supporting evidence to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *District Director's Decision,* dated March 14, 2006.

On appeal, counsel challenges the district director's finding, contending that the applicant did, in fact, submit evidence to prove extreme hardship to his wife.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [redacted] indicating they were married on February 14, 2000; an affidavit from copies of tax returns, a bank account statement, and other financial documentation; a letter from [redacted] employer; a letter of support; conviction documents; and an approved Immigrant Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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 [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> . . . .
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> (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 shows that on April 24, 2002, the applicant was convicted of battery – family violence for intentionally causing visible and substantial bodily harm to his wife in the State Court of Clayton County, State of Georgia. He was sentenced to twelve months imprisonment in the Clayton County jail, a sentence that was initially suspended during probation. However, the record shows that the applicant violated probation by failing to avoid harassing or violent contact with his wife, and, as a result, was imprisoned for ten months.

In the recently decided *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. However, the AAO notes that the statute under which the applicant was convicted is not a divisible statute.[1] The AAO also notes that battery under Georgia law requires more than simple battery's offensive touching or physical harm, and that the injury must be substantial physical harm or visible bodily injury. *See Williams v. State*, 248 Ga.App. 316, 318-19 (2001). Therefore, the AAO finds, and counsel does not contest, that the applicant is inadmissible under section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), for having committed a crime involving moral turpitude. *Cf. In re Sanudo,* 23 I. & N. Dec. 968 (BIA 2006) (stating that "assault and battery offenses that necessarily involved the intentional infliction of serious bodily injury on another have been held to involve moral turpitude," and holding that a battery conviction that involves only a minimal, nonviolent touching does not inhere moral turpitude even when inflicted upon a spouse); *Matter of Tran*, 21 I. & N. Dec. 291 (BIA 1996) (holding that a conviction for willful infliction of corporal injury on the parent of one's child under section 273.5(a) of the California Penal Code is a conviction for a crime involving moral turpitude); *Grageda v. U.S. INS*, 12 F.3d 919 (9th Cir. 1993) (same).

A section 212(h) waiver is 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. *See* section 212(h) of the Act, 8 U.S.C. § 1182(h). 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-Moralez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999), provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under the Act. These factors include: 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

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[1] "A person commits the offense of battery when he or she intentionally causes substantial physical harm or visible bodily harm to another." OCGA § 16-5-23.1(a). "If the offense of battery is committed between past or present spouses, . . . then such offense shall constitute the offense of family violence battery . . . ." OCGA § 16-5-23.1(f).

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.

In this case, [redacted] states that she has a ten-year old daughter from a previous relationship and that the couple has a six-year old son together. [redacted] states that the applicant is very much a part of the children's lives, the applicant has a special bond with their son, and treats her daughter like she was his own child. In addition, [redacted] states she has been unable to sleep at night because she is constantly worrying about the applicant's immigration status and blames herself for his predicament as she believes the majority of their problems resulted from postpartum depression after she gave birth to their son. [redacted] further states that the applicant is the primary provider and decision maker in their home. She claims she would be unable to properly take care of the children without the applicant's assistance and that they "would become wards of the State because [she] would be unable to mentally and physically provide for them." *Affidavit of* [redacted] dated My 25, 2006.

It is not evident from the record that the applicant's wife, son, or daughter will suffer extreme hardship as a result of the applicant's waiver being denied.

Although the AAO recognizes [redacted] and her children will suffer hardship as a result of the denial of the applicant's waiver application and is sympathetic to the family's circumstances, after a careful review of the record, there is insufficient evidence that the hardship they would suffer rises to the level of extreme hardship. Significantly, [redacted] does not mention the possibility of moving to St. Lucia to avoid the hardship of separation, and does not address whether such a move would represent a hardship to her or her children. Rather, if [redacted] and her children decide to stay in the United States without the applicant, their 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. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991) (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).

Although [redacted] claims that the applicant is the primary provider for the family and that she would be unable to provide for her children alone, according to the most recent financial documents in the record, [redacted] annual salary in 2005 was $41,817 while the applicant earned $12,495 from January 1, 2005, until September 8, 2005. *Affidavit of Support Under Section 213A of the Act (Form I-864)*, signed by [redacted] September 13, 2005; *Letter from* [redacted], dated September 13, 2005 (stating that the applicant works for a staffing company that employs individuals on various work assignments and that employees are paid daily at varying rates); *see also 2003 Wage and Tax Statement (Form W-2) for* [redacted] (stating her wages in 2003 were

$42,611). Aside from working for nine months in 2005, there is no other evidence the applicant has worked since he entered the United States in October 1999. *See Biographic Information*, signed by the applicant April 26, 2004 (listing no employment for the past five years). Therefore, the record does not support [redacted]'s claim that the applicant is the primary source of support for the family and that she would be unable to provide for her children without her husband. In any event, even assuming some economic hardship, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See also 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).

To the extent [redacted] conclusively states, without elaboration, that she would be mentally and physically unable to care for her children and claims that has been unable to sleep because she is constantly worried about her husband's immigration status, there is no evidence in the record to show that she has any mental or physical impairment. There is no medical documentation in the record, such as a letter or statement from a doctor or health care professional. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of a medical or mental health condition, or the treatment and assistance needed.

A review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to 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, 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.