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

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: LOS ANGELES, CALIFORNIA Date: FEB 03 2005

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. 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 Mexico who entered the United States without inspection in 1985. The record indicates that the applicant is the beneficiary of an approved petition for alien relative filed by his lawful permanent resident (LPR) mother. The applicant was found to be inadmissible to the United States pursuant to § 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 (lewd acts with a child under fourteen). The applicant seeks a waiver of inadmissibility in order to reside in the United States, assisting his mother and his four U.S. citizen children.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relatives. The application was denied accordingly.

On appeal, the applicant asserts that his mother and his children all require the financial assistance he can only provide them if he remains in the United States. In support of this contention, the applicant submits a brief, birth certificates for his children, a letter indicating that his mother was laid off from her job, statements by his mother and the mother of two of his children, and a 1997 letter from a counseling service stating that the applicant had been in therapy since January 1995.

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

> (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) states 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)(A) [I]t is established to the satisfaction of the Attorney General that-
> >
> > > (i) [T]he activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
> >
> > > (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
> >
> > > (iii) the alien has been rehabilitated; or

> (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 applicant's conviction under California Penal Code § 288A for lewd acts with a child under age fourteen occurred on June 3, 1994, and his application for adjustment of status was filed on September 11, 1995, less than 15 years after his conviction. The applicant is therefore statutorily ineligible for a waiver pursuant to § 212(h)(1)(A) of the Act. He is however, eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(B) of the Act.

On appeal, the applicant attempts to explain the circumstances surrounding the commission of the crime for which he was convicted. The AAO notes that this office cannot go behind the judicial record to determine the guilt or innocence of an alien. *See Matter of Max Alejandro Madrigal-Calvo,* 21 I&N Dec. 323, 327 (BIA 1996).

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.

U.S. court decisions have additionally 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.

It appears that the applicant's main focus on appeal is the economic detriment his qualifying family members would suffer upon his removal. The AAO notes, in this regard, that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The record reflects that the applicant's mother was laid off from her position with Sky Chefs, Inc. in February 2002. In her statement written on February 11, 2003, the applicant's mother stated that since she lost her employment, the applicant was providing over 30 per cent of her household support. Although the applicant's mother wrote that she suffers from diabetes, and that the applicant takes her to medical appointments, she did not indicate that she was unable to work or that she could not function normally without the applicant's presence.

On February 19, 2003, [redacted] mother of two of the applicant's children, wrote that the applicant provided $150 per month in child support and that he paid for the children's medical insurance. The record does not indicate that [redacted] has no other source of support, such as income and insurance from her own employment. The record also does not show that the applicant could not contribute to the support of his children even after he is removed. The record does not establish that the applicant's mother and children have no means of support aside from the applicant, or that, should they experience a reduction in income due to his departure, they would be unable to make the necessary household adjustments to compensate. In addition, the applicant does not discuss the alternative possibility that his mother and/or children could accompany him to Mexico; nor does the record contain any statements to the effect that such a choice would be out of the question.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen children and/or LPR mother would suffer hardship unusual or beyond that which would normally be expected upon the removal of a close family member. 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 § 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.