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**U.S. Citizenship  
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FILE: [REDACTED] Office: LOS ANGELES DISTRICT OFFICE Date: **JAN 28 2005**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act (INA), 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles. 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 was found inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I). The record reflects that the applicant is the spouse of a U.S. citizen and parent of one U.S. citizen stepchild. He seeks a waiver of inadmissibility to remain in the United States with his family and adjust his status to that of a lawful permanent resident pursuant to INA § 245, 8 U.S.C. § 1255, as the beneficiary of an approved immediate relative petition filed on his behalf by his wife.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(i) In general.—Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the elements of—

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, . . .

...

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

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correction institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(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 six months (regardless of the extent to which the sentence was ultimately executed).

8 U.S.C. § 1182(a)(2)(A). The district director based the finding of inadmissibility under this section on the applicant's 1998 conviction for spousal abuse. *Decision of the District Director* (October 17, 2003) at 2. The record reflects that the applicant was convicted for inflicting corporal injury on his spouse in violation of section 273.5 of the California Penal Code. He was sentenced to payment of fines of \$2,450.86, 120 days

confinement, and 36 months probation. He was also convicted, on or about January 15, 1997, of driving under the influence of alcohol (.08 or higher), in violation of California Vehicle Code 23152(B), for which he was sentenced to pay fines of \$1,134 and to serve 10 days in jail. Because he has been convicted of two crimes, he is ineligible for an exception to inadmissibility for a single petty offense pursuant to INA § 212(a)(2)(ii). The applicant does not contest the district director's determination of inadmissibility. Section 212(h) of the Act provides, in pertinent part:

The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . if—

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that—

(i) . . . the 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 [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;

. . . and

(2) the [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status. . .

8 U.S.C. § 1182(h). As the activities for which he was convicted occurred less than 15 years ago, the applicant is statutorily ineligible for a waiver of inadmissibility under INA § 212(h)(1)(A). A section 212(h)(1)(B) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the alien himself is not a

permissible consideration under the statute. The sole qualifying relatives for whose benefit the waiver may be granted in this case are the applicant's U.S. citizen wife, step-daughter, and step-son.<sup>1</sup>

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 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 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 also 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 the applicant's wife is a 49-year-old naturalized citizen born in Mexico. She became a U.S. citizen in 1986. She and the applicant married in 1997. The couple separated for one month after the 1998 incident of domestic violence. She has two children from prior relationships, aged 13 and 20. The 13-year-old daughter resides with the couple. In his brief in support of the appeal, the applicant expresses concerns that his wife and step-daughter will suffer financially and emotionally from the burden of single parenthood, particularly because he is the only father his step-daughter has known. He also expresses regret regarding the incident of domestic violence and states that he learned from the counseling he received. The record does not contain financial information more recent than 1999, when the couple's combined income was \$64,989. There is no record of the individual incomes of the applicant and his spouse, in order to assess the potential financial impact of the applicant's departure.

The record reflects that the applicant's 16-year-old step-son does not live with the couple, but visits regularly. It appears that, if the applicant's wife relocated to Mexico to avoid separation from the applicant, she would bring her daughter but not her son, who would remain in the custody of his natural father. She would also

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<sup>1</sup> Section 101(b) of the Act provides that a "parent" for purposes of these proceedings includes a parent where the parent-child relationship is created by marriage, as long as the child was under age 18 on the date of the marriage. INA §§ 101(b)(1)(B), 101(b)(2). The record reflects that the applicant and her spouse married on August 30, 1997, when the applicant's daughter was six years old and her son thirteen.

leave behind her mother and father. The applicant's step-daughter speaks and reads only English and has lived and been educated her entire life in the United States.

Although CIS is not insensitive to the family's situation, 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 step-children or his spouse face extreme hardship if he is refused admission, particularly if they remain in the United States and mitigate the effects of separation by visiting the applicant in Mexico. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. 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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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). Inability to pursue one's chosen career or reduction in standard of living does not necessarily result in extreme hardship. See *Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9<sup>th</sup> Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9<sup>th</sup> Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.")

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse and step-children as required under INA § 212(h), 8 U.S.C. § 1186(h).

In proceedings for application for waiver of grounds of inadmissibility under section 212 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.