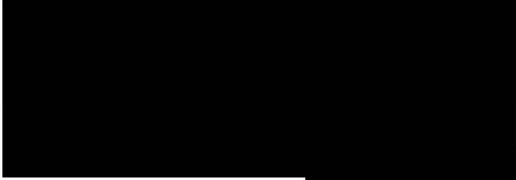




U.S. Citizenship
and Immigration
Services

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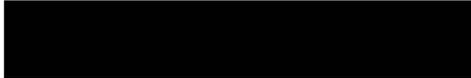


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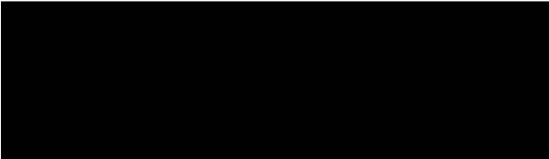
Date: APR 05 2006

IN RE:



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:



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 Interim District Director, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under 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 been convicted of crimes involving moral turpitude. The applicant is the spouse of a naturalized United States citizen and the parent of two United States citizens. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his spouse and children.

The interim 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 Excludability (Form I-601) accordingly. *Decision of Interim District Director*, dated November 18, 2003.

On appeal, counsel states that Citizenship and Immigration Service (CIS) erroneously denied the I-601 waiver application. *Attachment to Form I-290B*, undated. In support of this assertion, counsel submits a statement. The entire record was reviewed and considered in rendering a decision on the applicant's appeal.

The record reflects that, on September 8, 1995, the applicant was convicted of Taking Vehicle Without Owner's Consent and sentenced to probation for three years and ordered to serve 90 days in jail. On February 26, 1999, the applicant was convicted of two counts of Theft. Under the first count, the applicant received a deferred sentence of two years. Under the second count, the applicant was sentenced to probation for two years and assessed a fine and court costs.

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 -
 - (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 [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 . . .

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child

or parent of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) of the Act. 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).

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 pursuant to section 212(i) of 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 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.

Counsel contends that the applicant's spouse and children would suffer extreme hardship as a result of relocation to Mexico in order to remain with the applicant. Counsel asserts that the younger child of the applicant and his spouse currently receives special needs education that he would be unable to obtain in Mexico. *I-601 Application for Waiver of Grounds of Excludability*, dated July 2, 2003; *see also Consular Information Sheet for Mexico and Attachments*, dated November 20, 2002. Counsel indicates that the applicant's spouse grew up in the United States and that the children of the applicant and his spouse were born in this country. **Counsel states that the applicant's spouse does not have relatives in Mexico.** *I-601 Application for Waiver of Grounds of Excludability* at 8. Counsel contends that the applicant's spouse does not speak Spanish well and only has a high school education and therefore would be unable to obtain employment in Mexico. *Id.* at 9. Counsel asserts that the applicant's spouse and children would have no place to live in Mexico as the applicant's parents reside in a very small house that already provides shelter for several family members. *Id.* Counsel states that the applicant's spouse and children would not enjoy medical insurance coverage or the financial means in Mexico necessary to address the hearing issues experienced by the couple's younger child or the migraine headaches suffered by the applicant's spouse. *Id.*

Although counsel establishes that extreme hardship would likely be imposed on the applicant's spouse and children as a result of relocation to Mexico in order to remain with the applicant, the record fails to demonstrate that the applicant's spouse and children would suffer extreme hardship as a result of remaining in the United States in the absence of the applicant. Counsel contends that the decision of the interim district director incorrectly found that the hearing problems suffered by the applicant's son were corrected by surgery and no longer imposed a disability on the child. *Attachment to Form I-290B*. Counsel indicates that although the corrective surgery undergone by the child was successful, he is still learning to speak and continues **receiving special education services for his disability.** *Id.* **While the medical condition and associated educational disabilities suffered by the applicant's child are regrettable, the record fails to establish that the presence of the applicant is necessary for his child's successful development.** The record reflects that the **applicant's son receives remedial education services through the public school system where he resides and continues to make progress in his development.** *See Letter from [REDACTED] Assistant Principal*, dated June 9, 2003 and *Letter from [REDACTED]* dated December 4, 2001. Counsel cites *In re Monreal*, 23 I & N Dec. 56 (NIA 2001) to support the contention that an application with a qualifying child who has special needs is a strong candidate under the exceptional and extremely unusual hardship standard and therefore the

instant application should certainly qualify for waiver under section 212(h)'s more readily met extreme hardship standard. *Attachment to Form I-290B*. The AAO does not find this assertion persuasive, however, where the record fails to articulate a particularized need for the applicant's presence in maintaining his child's progress.

U.S. court decisions have repeatedly 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. The AAO recognizes that the applicant's spouse and/or children would likely endure hardship as a result of separation from the applicant. However, their situation, 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and/or children 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 under section 212(h) of the Act, 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.