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[Redacted]

FILE: [Redacted] Office: LOS ANGELES DISTRICT OFFICE Date: AUG 04 2008

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:

[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.

Robert P. Wiemann, Chief
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 applicant, [REDACTED] a native and citizen of Mexico, was found to be inadmissible to the United States pursuant to 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 record indicates that the applicant has a U.S. citizen spouse [REDACTED] and two U.S. citizen stepchildren, [REDACTED] son and daughter. The applicant seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with his wife in the United States.

The district director's decision does not include reference to the specific offenses committed by the applicant that served as the grounds of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. *District Director's Decision*, dated October 7, 2004. The record reflects, however, that [REDACTED] plead guilty and was convicted of the offenses of assault on a police officer, committed on August 9, 1997; and battery, committed on November 16, 1997, among other offenses. Counsel does not contest the district director's determination of inadmissibility.

The district director also found that the applicant 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. *Id.*

On appeal, counsel asserts that the record demonstrates that a denial of the waiver of inadmissibility would result in extreme hardship to the applicant's spouse and to his stepson and stepdaughter. *See Letter from Counsel, attachment to Notice of Appeal to the Administrative Appeals Office (Form I-290B)*, dated October 5, 2004. Counsel requested 30 days in which to submit a brief. *Form I-290B*. On May 15, 2006 the AAO requested a copy of that brief. **There has been no response to that request. The record is, therefore, considered complete.** The entire record was reviewed and considered in rendering this decision.

Counsel also requests oral argument. The regulation at 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. CIS has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, the request is denied.

The record includes affidavits from [REDACTED] and [REDACTED] regarding the emotional and financial hardships she and her children would suffer if the applicant were not allowed to remain in the United States (*See Attachments to Form I-290B, supra*, dated November 5, 2004); and a doctor's letter stating that [REDACTED] child, [REDACTED] was diagnosed in September 2002 with *spondyloarthritis* (referred to as systemic juvenile rheumatoid arthritis by [REDACTED] for which he takes medication daily, and has been in the care of his mother, stepfather and grandmother. *Id.* The record also contains an affidavit from [REDACTED] MSW, LCSW; who was asked to prepare a "psycho-social evaluation" of the family. *Social Worker's*

Affidavit, undated, submitted with *Application for Waiver of Grounds of Inadmissibility (Form I-601)*, dated September 17, 2004. It describes the history of [REDACTED] and [REDACTED] noting that [REDACTED] had many problems until he met [REDACTED] 1998; that [REDACTED] came to the United States with her mother 25 years ago, became a licensed cosmetologist and raised four children from a prior relationship. *Id.* It further notes that [REDACTED] three younger children, [REDACTED] (aged 21), [REDACTED] (aged 15), and [REDACTED] (aged 10), live with the couple, and they and their mother depend on [REDACTED] for emotional and financial support. *Id.* The affidavit also includes excerpts that, “[a]ccording to the Department of State’s Country Report for Mexico, dated July 30, 2004 . . . are included as it relates [sic] to lack of work, poor living conditions, and limited protection for women and children in Mexico.” *Id.* Also included in the record are a letter from [REDACTED] daughter Aneth attesting to [REDACTED] good character; a letter from his employer affirming his employment for over five years and attesting to his good character; joint tax returns for 2000, 2001 and 2002; other documents confirming shared financial agreements, including a joint checking account, a commercial lease, dated April 2000, for property used for [REDACTED] and a Grant Deed for a 2002 grant of property in Anaheim to [REDACTED] Married Woman as her sole and Separate Property”; and court and probation documents for [REDACTED] The entire record was reviewed and considered in arriving at a 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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, 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) . . . it is established to the satisfaction of the Attorney General 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 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 current application for adjustment of status is less than 15 years after his most recent offense. The applicant is therefore statutorily ineligible for a waiver pursuant to section 212(h)(1)(A) of the Act. He is however, eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(1)(B) of the Act.

A section 212(h)(1)(B) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse, parent or son or daughter of the applicant. Hardship to the applicant himself is not a permissible consideration under the statute and thus will be considered only insofar as it results in hardship to a qualifying relative in the application. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act; *see also Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

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 applicant 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.

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).

This matter arises in the Los Angeles district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. The AAO notes that extreme hardship to the applicant's spouse or children must be

established in the event that they reside in Mexico or in the event that they reside in the United States, as they are not required to reside outside of the United States based on the denial of the applicant's waiver request.

In this case, the record reflects that the applicant was born in Mexico in 1968. He notes that he resided in the United States from 1995 to the present. See *Biographic Information for [REDACTED] (Form G-325A)*, dated April 20, 2001. According to the social worker who interviewed the family, the couple met in 1998 and has maintained their relationship since then. *Social Worker's Affidavit, supra*. They married in 2001, and have resided together since that time. [REDACTED] was born in Mexico in 1961. In her affidavit, [REDACTED] refers to the medical problems of her son [REDACTED] and how he loves and needs [REDACTED] pays the mortgage and living expenses of the family; and that it would be a great hardship if the children were forced to leave their school and friends; in his affidavit, [REDACTED] refers to his wife's children, [REDACTED] and [REDACTED] and how he has considered himself to be their father since the time he met their mother. See *Attachments to Form I-290B, supra*. The record is incomplete regarding [REDACTED] children. It includes birth certificates for [REDACTED] showing birth in the United States on April 8, 1994, and for Aneth, showing birth in the United States on June 4, 1985; there is no birth certificate for [REDACTED] who is listed on [REDACTED] Form I-601 as a stepdaughter who is a U.S. citizen. See *Application for Waiver of Grounds of Inadmissibility (Form I-601), supra*. The record is also silent as to any costs associated with the care of his stepchildren, including for medical expenses for [REDACTED]. Joint tax records show that [REDACTED] is the sole support of the family, he earns a living as a plumber, and [REDACTED] is an unemployed housewife. She also states that she works as a cosmetologist for the [REDACTED]. See *Biographic Information for [REDACTED] (Form G-325A)*, dated April 20, 2001. Though counsel for [REDACTED] states that [REDACTED] plans to make [REDACTED] and [REDACTED] beneficiaries of his estate, and has taken steps to adopt [REDACTED] and [REDACTED] there is no evidence to support these assertions. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In fact, tax records do not include any children as dependents, and there is no evidence in the record that any children reside at the couple's address or that [REDACTED] taken on any financial responsibility for them. Form I-601 indicates that all three children, [REDACTED] and [REDACTED] reside at a different address from [REDACTED] and [REDACTED]. Given the fact that there is no birth certificate in the record for [REDACTED] and there is no way to determine if she is a qualifying relative, this decision does not refer to any hardship that she might suffer.

The AAO recognizes that the family would suffer economic detriment and their wage-earning potential would be diminished if they moved to Mexico or if [REDACTED] income were reduced. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute 'extreme hardship.'" *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) ("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 (9th Cir. 1994) ("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"); *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); *INS v. Jong Ha Wang*, 450 U.S.

139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

However, particularly in the Ninth Circuit, courts have recognized that, in certain cases, economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme. "Included among these are the personal hardships which flow naturally from an economic loss, decreased health care, educational opportunities, and general material welfare." *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th cir. 1981) (citations omitted); see also *Santana-Figueroa v. INS*, 644 F.2d 1354, 1358 (9th cir. 1981) ("Economic loss often accompanies deportation. Even a significant reduction in standard of living is not, by itself, a basis for relief. . . . But deportation may also result in the loss of all that makes life possible. When an alien would be deprived of the means to survive, or condemned to exist in life-threatening squalor, the "economic" character of the hardship makes it no less severe.").

The record shows that [REDACTED] earned over \$61,000 as a plumber in 2002, over \$55,000 in 2001, and over \$46,000 in 2000; for those same years [REDACTED] did not show any income. See *Joint Income Tax Returns (Form 1040)*, 2000-2002. It is not likely that [REDACTED] could earn the equivalent income in Mexico, even though he is a skilled plumber. The AAO notes, however, that the couple did not list any dependents on their income tax forms. Though [REDACTED] ability to support himself and contribute to his wife's support while living and working in Mexico would be substantially reduced, there is no indication that he would not be able to find work or contribute to his wife's support, albeit minimally. There is also every indication that [REDACTED] could earn a living with her training as a cosmetologist. She noted that she worked as a cosmetologist from 1994-2001 and she leases a commercial property for [REDACTED]. Moreover, the deed to property acquired in 2002 is in her name and represents financial equity for her. She would need to shoulder the burden of contributing to her own support, but as noted above, she has a marketable skill and there is no evidence that she has living expenses beyond the ordinary. The record does not show that her son's medical care is costly or that she or [REDACTED] paid for such care. Though she and her children would suffer emotionally from separation from the applicant if they chose to remain in the United States, it appears that they face the same decision that confronts others in their situation – the decision whether to remain in the United States or relocate to avoid separation.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that [REDACTED] or her children face extreme hardship if the applicant is refused admission, as they have the choice to remain in the United States. 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 individuals who are deported.

In this case, though [REDACTED] and her children will endure financial and emotional hardship if they remain in the United States separated from the applicant, their situation, based on the record, is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse or children as required under section 212(h)(1)(B) of the Act, 8 U.S.C. § 1186(h)(1)(B). 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 rests 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.