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U.S. Citizenship  
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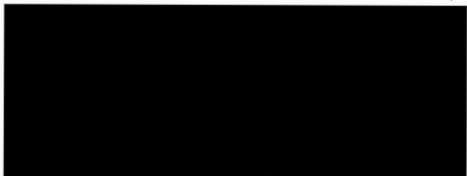


FILE: [REDACTED] Office: DENVER, CO Date: AUG 04 2008

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 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, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Interim District Director, Denver, Colorado. The matter 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 citizen of the United States and the parent of 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 Inadmissibility (Form I-601) accordingly. *Decision of the Interim District Director*, dated October 23, 2003.

On appeal, the applicant's spouse states that she does not want the couple's children to grow up without the presence of their father. She indicates that the applicant's absence will impose financial hardship on the family because the applicant is the only one that is employed. The applicant's spouse explains that she lost her mother when she was a baby and that she does not want her children to suffer through the same loss. *Attachment to Form I-290B*, dated November 6, 2003. The entire record was reviewed and considered in rendering a decision on the applicant's 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 [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 . . .

The record reflects that, on June 20, 2002, the applicant was convicted of Theft in the Longmont Municipal Court, Longmont, Colorado. The applicant was sentenced to classes, an essay and community service. The record further reflects that, on March 3, 2000, the applicant was convicted of Domestic Violence. The applicant was placed on probation for a period of two years. *Attachment to Form I-290B*.

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. Hardship the alien himself experiences upon deportation is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse and children. 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 (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.

On appeal, the applicant's spouse states that she does not want the couple's children to grow up without the presence of their father. She indicates that the applicant's absence will impose financial hardship on the family because the applicant is the only one that is employed. The applicant's spouse explains that she lost her mother when she was a baby and that she does not want her children to suffer through the same loss. *Attachment to Form I-290B*. While any hardship endured by the applicant's spouse and children is regrettable, the submitted statements do not evidence a level of hardship that can be considered extreme. The statements of the applicant's spouse reflect hardships typical to those faced by individuals separated as a result of inadmissibility. The AAO notes that the applicant's spouse indicates that she would encounter financial hardship in the absence of the applicant. *Id.* However, the record fails to demonstrate that the applicant's spouse is unable to obtain employment in order to support herself and her children. Moreover, the record fails to establish that the applicant will be unable to financially contribute to the maintenance of his family from a location outside of the United States. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The record makes no assertions regarding the factors identified in *Matter of Cervantes-Gonzalez* and therefore, fails to address the qualifying relatives' family ties outside the United States; the conditions in the country or countries to which the qualifying relatives would relocate and the extent of the qualifying relatives' 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** relatives would relocate. In the absence of documentation addressing these subjects, the AAO is unable to determine whether or not extreme hardship would be imposed on the applicant's spouse and children as a result of relocating to Mexico in order to remain with the applicant.

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. Moreover, 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 AAO recognizes that the applicant's spouse and children would endure hardship as a result of separation from the applicant or as a result of relocating to Mexico in order to remain with the applicant. However, their situation, based on the record, 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 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.