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U.S. Citizenship  
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Services

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[Redacted]

FILE: [Redacted] Office: LOS ANGELES, CA Date: DEC 05 2006

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:  
[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, 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 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 is married to a U.S. citizen and has three U.S. citizen children. The applicant seeks a waiver of inadmissibility in order to reside with his wife and children in the United States.

The district director found that there was no evidence in the record to support a finding that the applicant's qualifying relatives would experience any extreme hardship over and above the normal hardship one would experience should the applicant be removed from the United States. The application was denied accordingly. *Decision of the District Director*, dated March 16, 2005.

On appeal, counsel asserts that the government failed to consider material evidence regarding extreme hardship, misconstrued material evidence, and that the AAO must consider the new evidence submitted on appeal. *Form I-290B*, dated April 18, 2005.

The AAO notes that counsel indicated on his Form I-290B that he would be submitting a brief and/or evidence to the AAO within 30 days, however the record does not contain a brief and/or additional evidence. On October 30, 2006 the AAO sent a notice by fax to counsel requesting that any previously submitted documentation be sent directly to the AAO office within five business days. The AAO never received any further information from counsel. Therefore, the current record is the complete record that will be evaluated in reviewing this application.

The record indicates that the applicant was convicted of three crimes involving moral turpitude. The applicant was convicted of petty theft on August 22, 1997; petty theft for a second time on October 16, 1997 and giving false identification to a police officer on October 4, 1999.

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 actions leading up to these convictions occurred less than 15 years from the present time. 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)(B) of the Act.

A section 212(h)(B) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship the alien himself experiences due to separation is irrelevant to section 212(h)(B) waiver proceedings unless it causes hardship to the applicant's spouse and/or 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (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 to a qualifying relative. The 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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).

The AAO notes that extreme hardship to the applicant's spouse and/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 the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Mexico. In her declaration, dated February 24, 2004, the applicant's spouse states that she has lived in the United States for almost her entire life and that her entire family resides in the United States. She states that she has no family outside of the United States and has not left the United States since 1984. She states that if she was forced to relocate to Mexico she would not be able to care for her elderly parents and they would not be able to visit her often. She states that she will not be able to find employment in Mexico because the unemployment rate is high and she will be living in a small rural community. She also states that the cost of relocation would be enormous. The AAO notes that the applicant's spouse submitted no documentation to support her claims concerning country conditions in Mexico and her ability to find employment. The AAO cannot take the spouse's assertions as fact. She must provide documentation to support her claims. Furthermore, the AAO also notes that relocation to a foreign country generally involves some inherent difficulties such as adapting to new surroundings and incurring moving costs, however, the current record does not reflect that relocation will result in extreme hardship to the applicant's spouse and/or children.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. In her declaration, the applicant's spouse states that as a result of the potential removal of the applicant, her and her children are devastated emotionally and are subject to tremendous mental anguish. She states that the children have a very close relationship with the applicant. The AAO notes that the applicant submitted no supporting evidence to show the extent and the specifics of the emotional hardship suffered by his wife and children. The applicant's spouse also states that the family would be devastated financially if the applicant were removed from the United States. However, in her declaration she asserts that she recently returned to the labor force and her skills are in high demand. She states she can quickly secure a position offering a competitive salary and benefits. She states that she works as a receptionist. She has not submitted any current financial documentation showing that she would not be able to care for her children if the applicant were removed from the United States. Therefore, the applicant has not established that his spouse and/or children would suffer extreme hardship above and beyond what is normally expected upon removal of a family member.

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 will endure hardship as a result of separation from the applicant. However, their situation is typical to individuals separated as a result of removal 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 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. 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.