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FILE:

Office: CHICAGO

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IN RE:

PETITION: 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 PETITIONER:

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 District Director, Chicago, Illinois, denied the waiver application, and it 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 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 a crime involving moral turpitude. The applicant is the spouse and parent of U.S. citizens. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his spouse and children.

The 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 the District Director*, dated August 16, 2004.

The record reflects that, on January 27, 1995, the applicant was arrested for domestic violence. On March 17, 1995, the applicant pled guilty to domestic violence and was sentenced to one year of probation. On May 11, 1997, the applicant was arrested and charged with two counts of domestic violence. On August 11, 1997, the applicant pled guilty to one count of domestic violence and the other charge was dismissed. The applicant was sentenced to 14 days in jail, 18 months of probation and completion of domestic violence counseling.

On May 8, 1996, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse. The record shows that the applicant appeared at Citizenship and Immigration Services' (CIS) Chicago District Office on January 29, 1997. The applicant admitted that he had been convicted of domestic violence in 1995. The applicant's second conviction for domestic violence occurred after the applicant's interview.

On June 3, 2004, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On appeal, counsel contends that the district director failed to consider the extreme hardship that would result to the applicant's spouse and children upon his deportation. *See Form I-290B*, dated September 20, 2004. In support of the appeal, counsel only submitted the above-referenced Form I-290B. The entire record was reviewed and considered in rendering 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 . . . 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) (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 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 district director based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's admission to and conviction for domestic violence, a crime involving moral turpitude. Counsel does not contest the district director's determination of inadmissibility. However, the applicant's spouse, in her affidavit, indicates she believes the applicant was innocent of the crimes for which he was convicted because she instigated the violence and he only pled guilty to the second charge due to his defense counsel's advice in regard to length of time and costs involved in a criminal trial. This assertion is unpersuasive. "[C]ollateral attacks upon an [applicant's] conviction do not operate to negate the finality of his conviction unless and until the conviction is overturned." *In Re* [REDACTED], 21 I&N Dec. 323, 327 (BIA 1996) (citations omitted.) Moreover, this office cannot go behind the judicial record to determine the guilt or innocence of an alien. *See Id. Matter of Khalik*, 17 I&N Dec. 518 (BIA 1980), held that the Service cannot go behind the judicial record to determine the guilt or innocence of an alien for a criminal offense. A record of conviction constitutes a conviction for immigration purposes. The applicant can only appeal such a conviction within the court system. Therefore, the AAO finds that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The AAO notes that the activities for which the applicant was found inadmissible occurred on May 11, 1997, less than 15 years prior to the applicant's application for adjustment of status or the date of this decision. Therefore, the AAO finds the applicant is statutorily ineligible to apply for a waiver under section 212(h)(1)(A) of the Act since he does not meet the requirement that the activities for which he is inadmissible occurred more than 15 years prior to his application for adjustment of status.

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(h) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse, parent, son or daughter of the applicant.

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 at 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. 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 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, on July 2, 1994, the applicant married his spouse, [REDACTED] (Ms. [REDACTED]). Ms. [REDACTED] is a native of Mexico who became a lawful permanent resident of the United States in 1978 and a naturalized U.S. citizen in 1994. The applicant and his spouse have a nine-year old son, a six-year old son and a five-year old daughter who are all U.S. citizens by birth. The record reflects further that the applicant and Ms. [REDACTED] are in their 30's, and Ms. [REDACTED] and the children do not have any health concerns.

Counsel contends that the emotional and economic hardships faced by Ms. [REDACTED] and the children combine to meet the standard for extreme hardship as described in *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978). In *Matter of Anderson* the Board of Immigration Appeals (BIA) found that, while political and economic conditions in an alien's homeland are relevant factors in determining extreme hardship, they do not justify a grant of relief unless other factors such as advanced age, severe illness, family ties, etc. combine with economic detriment to make deportation extremely hard on the alien or the citizen or permanent resident members of his family. The AAO notes that the standard set forth in *Matter of Anderson* refers only to establishment of hardship to the alien upon deportation to the foreign country and that in order for the applicant to prove extreme hardship to his spouse and children he must also show that they would suffer extreme hardship if they were to remain in the United States without the applicant as there is no law that requires them to leave with the applicant. Moreover, in *Cervantes-Gonzalez*, the BIA clearly states that the

relevant factor must still establish that the qualifying relative would suffer extreme hardship and that “(e)xtrême hardship’ is hardship that is . . . unusual or beyond that which would be normally be expected upon deportation . . . the common results of deportation are insufficient to prove extreme hardship.” *Supra.* at 567.

Ms. [REDACTED] asserts that she and the children would suffer extreme hardship if they were to remain in the United States without the applicant. In her affidavit, Ms. [REDACTED] states “it would be terrible for our children and I to experience the break up of our family.” The medical letter in the record does not indicate that either Ms. [REDACTED] or the children suffer from a mental or physical disease. However, it does state “Mr. [REDACTED] is the sole support of his family . . . his wife stays at home to provide care for their children.” Financial records indicate that Ms. [REDACTED] in the past, has contributed substantially to household income. In 2002, Ms. [REDACTED] contributed 51% or approximately \$28,838 to the household income. The record reflects that Ms. [REDACTED] and the children have family members in the immediate vicinity, such as Ms. [REDACTED] parents, who may be able to provide financial assistance in the absence of the applicant. The record shows that, even without assistance from family members, Ms. [REDACTED] has, in the past, earned sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. While it is unfortunate that Ms. [REDACTED] would essentially become a single parent and professional childcare may involve an added expense and not equate to the care of a parent, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. Moreover, the record reflects that, in the past, both the applicant and Ms. [REDACTED] have simultaneously worked away from the home, indicating that the children may already have alternative care during the periods in which the applicant and Ms. [REDACTED] were absent from the home due to work commitments. The record does not support a finding of financial loss that would result in an extreme hardship to Ms. [REDACTED] if she had to support herself and the children, even when combined with the emotional hardship discussed below. Ms. [REDACTED] in her affidavit, does not assert, and there is no evidence in the record to suggest, that Ms. [REDACTED] or the children suffer from a physical or mental illness that would cause them to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. Moreover, according to the record, Ms. [REDACTED] and the children have family members in the United States who may be able to support them emotionally in the absence of the applicant.

Ms. [REDACTED] asserts that she and the children would face extreme hardship if they relocated to Mexico in order to remain with the applicant. In her affidavit, Ms. [REDACTED] states “we seek the opportunity to educate our children in this country . . . I would not be able to leave my parents and it would certainly be extremely difficult for my children to depart from their grandparents.” As discussed above, there is no evidence in the record to suggest that Ms. [REDACTED] or the children suffer from a physical or mental illness that would cause them to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. Additionally, the applicant’s family members reside in Mexico and there is no evidence in the record to suggest that these family members could not provide emotional and financial support to the applicant, Ms. [REDACTED] and the children. While the hardships Ms. [REDACTED] and her children face are unfortunate, the hardships faced by them with regard to adjusting to a lower standard of living, separation from friends and family and missing an opportunity to be educated in the United States, are what would normally be expected with any spouse or child accompanying a deported alien to a foreign country. Finally, the AAO notes that, as U.S. citizens, the applicant’s spouse and children are not required to reside outside of the United States as a result of denial of the applicant’s waiver request.

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 spouse and children would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that Ms. [REDACTED] and the children will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse or parent is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. 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).

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse and children as required under section 212(h) of the Act, 8 U.S.C. § 1186(h). 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 an application for waiver of grounds of inadmissibility under section 212(h) 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.