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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: LOS ANGELES, CALIFORNIA

Date: MAY 30 2006

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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 is the beneficiary of an approved I-140 petition for alien worker. The applicant was found to be inadmissible to the United States pursuant to § 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 record indicates that the applicant's spouse is applying to adjust her status to that of lawful permanent resident (LPR) concurrently with the applicant, and that the applicant has a U.S. citizen child born in 2002. The applicant seeks a waiver of inadmissibility in order to reside with his wife and child in the United States.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen child, and the application was denied accordingly. On appeal, counsel asserts that the applicant's son would suffer extreme financial, educational, and emotional hardship if the applicant is removed from the United States, since his son would necessarily have to relocate to Mexico to accompany the applicant and the applicant's wife.

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 applicant was convicted of disorderly conduct (lewd act) on June 18, 1992, December 21, 1995, and October 17, 1996. The criminal activity for which the applicant was found inadmissible occurred less than 15 years prior to this application for adjustment of status; therefore, the applicant is statutorily ineligible for a waiver pursuant to § 212(h)(1)(A) of the Act. He is, however, eligible to apply for a waiver of inadmissibility pursuant to § 212(h)(B) of the Act.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (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. These factors included 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.

U.S. court decisions have 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), 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.

On appeal, counsel asserts that the district director's decision was "arbitrary, irrational, and capricious," and that it failed to address the "many favorable equities weighing in support of a grant of discretion." Given that the district director found the applicant statutorily ineligible for relief, however, there was no need to discuss whether the favorable and unfavorable discretionary factors present. The AAO has reviewed the entire body of evidence in this case and concurs with the district director's assessment that the applicant has failed to establish that his child would suffer extreme hardship in the event the applicant is removed.

The applicant's child is four years old, and the applicant claims in his statement on appeal that his son does not speak Spanish. Counsel asserts that the child would have extreme difficulty in adjusting to life in Mexico, and that he would have greatly reduced educational opportunities in that country. There is no documentation to this effect on the record. There is also no evidence showing that this four year old child would have any difficulty learning the Spanish language. Counsel points out that the applicant's son has many relatives with whom he has a close relationship in the United States, and that he would suffer emotional trauma upon having to leave them. The record does not indicate the nature of his familial ties in Mexico, nor does it establish that the applicant's child would suffer greater emotional hardship than other children due to the separation from his cousins, aunts, and uncles.

Counsel asserts that the weak economic climate and unemployment in Mexico would make it difficult for the applicant to find employment similar to that which he has obtained in the United States. Counsel also states that the applicant's wife would have to work if they moved to Mexico, thus depriving the applicant's U.S. citizen child of his mother's care. The documentation on the record does not establish that the applicant's child would suffer any unusual hardship as a result of being cared for by someone other than the applicant's wife. The record also does not establish the nature and extent of the employment possibilities available to the applicant and his spouse in Mexico. The AAO notes that a change in employment and/or economic status often accompanies a relocation abroad as a result of removal and does not constitute extreme hardship.

The totality of the documentation in the record does not establish that the applicant's U.S. citizen child would suffer hardship that was unusual or beyond that which would normally be expected upon the applicant's removal. In proceedings for application for waiver of grounds of inadmissibility under § 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.