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FILE: [REDACTED] Office: SAN FRANCISCO, CA Date: **MAY 19 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, San Francisco, California, and 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 naturalized United States citizen and 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 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 District Director*, dated May 13, 2004.

On appeal, counsel contends that the waiver application was unfairly denied. *Applicant's Brief in Support of Motion to Reopen*, dated June 7, 2004. Counsel indicates that the hardship in the application was not effectively demonstrated previously because the applicant was not represented by counsel. Counsel asserts however that the applicant was entitled to a grant of waiver request because it was nonetheless clear that the applicant's spouse would have to support two children on her own in the absence of the applicant. *Form I-290B*, dated June 9, 2004. In support of these assertions, counsel submits a brief, a declaration of the applicant's spouse, medical reports regarding treatment of the applicant, and verification of the employment of the applicant. 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 decision of the district director lists and provides details regarding the applicant's criminal history. The AAO acknowledges counsel's statements indicating that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. *Applicant's Brief in Support of Motion to Reopen*. The AAO finds, however, that

the decision of the district director clearly finds the applicant inadmissible pursuant to section 212(a)(2)(A)(i) of the Act and retracts an earlier finding of inadmissibility pursuant to section 212(a)(6)(C)(i).

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. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) of the Act. 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, 565-566 (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.

Counsel contends that the applicant's spouse would endure hardship as a result of relocating to Mexico in order to remain with the applicant. The applicant's spouse states that her children would starve in Mexico owing to the lack of jobs. *Declaration of [REDACTED]* dated June 8, 2004. The applicant's spouse further indicates that the applicant's relatives barely earn a living in Mexico and therefore would not be able to assist the applicant and his family if they moved there. *Id.* The AAO notes that the record fails to provide substantiation of the assertions made by the applicant's spouse in regard to living conditions in Mexico. 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).

Moreover, the record fails to establish extreme hardship imposed on the applicant's spouse as a result of remaining in the United States in the absence of the applicant. The AAO acknowledges counsel's contention that the applicant's spouse would be unable to work in the absence of the applicant because she would be unable to afford a babysitter. *Applicant's Brief in Support of Appeal*, dated June 3, 2004. The record establishes that both the applicant and his spouse currently maintain employment. *Declaration of [REDACTED]*

The record fails to establish that the applicant's spouse is unable to work while her children are in school or that the applicant's spouse is unable to obtain alternative care for the children. The applicant's spouse contends that the applicant will be unable to obtain employment in Mexico. *Id.* However, the record fails to establish that the applicant will be unable to provide financial assistance to his family from a location outside of the United States. In the absence of substantiating information, the AAO is unable to render a finding of extreme hardship.

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 would likely endure hardship as a result of separation from the applicant. However, her 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 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.