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U.S. Citizenship  
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FILE:



Office: LOS ANGELES

Date:

**MAY 19 2006**

IN RE:



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: Self-represented

**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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Los Angeles, California, 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 crimes involving moral turpitude. The applicant is the spouse of a U.S. citizen and father of a U.S. citizen son. 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 son.

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 November 17, 2004.

The record reflects that, on May 2, 1994, the applicant was convicted of willful infliction of corporal injury on a spouse, cohabitant, or parent of the perpetrator's child, in violation of section 273.5(a) of the California Penal Code and was sentenced to 60 days jail with 36 months probation. On March 26, 1996, the applicant was convicted of willful infliction of corporal injury on a spouse, cohabitant, or parent of the perpetrator's child, in violation of section 273.5(a) of the California Penal Code and was sentenced to 30 days jail with 36 months probation.

On January 20, 2001, the applicant married his spouse, [REDACTED] a U.S. citizen by birth. On May 3, 2001, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse. On April 11, 2002, 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 November 17, 2004, the district director issued a notice of denial of the application because the applicant was convicted of two crimes involving moral turpitude and had failed to establish that extreme hardship would be imposed on a qualifying family member.

On appeal, the applicant's spouse asserts that she and the applicant's son would experience extreme hardship if the applicant were not admitted to the United States. *See Affidavit*, dated December 14, 2004. In support of the appeal, the applicant submitted the above-referenced affidavit and 2003 tax records. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A)(i) of the Act states in pertinent part:

- (1) Criminal and related grounds. —
  - (A) Conviction of certain crimes. —
    - (i) In general. — Except as provided in clause (ii), any 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) of the Act provides, in pertinent part, that:

Waiver of subsection (a)(2)(A)(i)(I) . . .

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I).

.. 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 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 convictions for willful infliction of corporal injury on a spouse, cohabitant, or parent of the perpetrator's child, crimes involving moral turpitude. *Matter of Tran*, 21 I&N Dec. 291 (BIA 1996). [REDACTED] contends that the applicant only committed what acts he did commit due to his desperation to "straighten out" his son's mother, who was an addict. [REDACTED] also contends that on at least two occasions, the victim falsely accused the applicant of committing violence against her. These assertions are 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 Max Alejandro Madrigal-Calvo*, 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.

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 AAO notes that the record does not contain the applicant's son's U.S. Birth Certificate and only his social security card number. However, for the purposes of this decision the AAO will assume that the applicant's son is a U.S. citizen.

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 the applicant has a 13-year old son who is a U.S. citizen by birth. The applicant and [REDACTED] do not have any children together. The record reflects further that the applicant is in his 30's, [REDACTED] is in her 20's, and [REDACTED] and the applicant's son do not have any health concerns.

[REDACTED] asserts that she and the applicant's son would suffer emotional and financial hardship if they were to remain in the United States without the applicant. [REDACTED] contends that she would be unable to support the applicant's son because she is currently not self-sufficient and the applicant's son may be placed in foster care because his mother is incapable of caring for him due to her drug addiction. Financial records indicate that, while the applicant is currently the primary source of income for the household, [REDACTED] was employed from January 1998 until December 1999. The record contains no evidence to indicate what [REDACTED]'s salary was or that she would be unable to obtain employment sufficient to support her and the applicant's son. There is no evidence in the record to indicate what are the applicant and [REDACTED]'s costs of living. There is no evidence in the record to suggest that [REDACTED] and the applicant's son 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. The record indicates that the applicant's spouse has family members, such as her mother, and that the applicant's son has family members, such as the applicant's brother, in the United States who may be able to assist them financially or emotionally in the absence of the applicant. While it is unfortunate that [REDACTED] would essentially become a single parent and professional childcare may be expensive and may 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.

[REDACTED] contends that she and the applicant's son would suffer hardship if they were to accompany the applicant to Mexico. [REDACTED] states that the applicant's son does not know anyone in Mexico, has never been to Mexico and, while he knows how to speak Spanish, he is unable to read or write it. [REDACTED] asserts that she grew up in the United States and would be unable to obtain employment or "get ahead in life there." She further contends that the applicant "fears not being qualified to get a stable job" in Mexico. As

discussed above, there is no evidence that [REDACTED] or the applicant's son 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. There is no evidence in the record that the applicant and [REDACTED] would be unable to obtain any employment in Mexico. Moreover, the applicant's parents and [REDACTED] father reside in Mexico and may be able to provide financial and emotional assistance. While the hardships faced by [REDACTED] with regard to adjusting to the economy and culture of Mexico are unfortunate; they are what would normally be expected with any spouse accompanying a deported alien to a foreign country. As set forth in *Matter of Kao & Lin*, 23 I&N Dec. 45 (BIA 2001), the hardships the applicant's adolescent son would experience upon accompanying the applicant to Mexico constitute extreme hardship. However, the AAO finds that, as U.S. citizens, the applicant's spouse and the applicant's son are not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, neither of them would experience extreme hardship if they remained in the United States without the applicant.

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 son would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] and the applicant's son 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 or son 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.