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**U.S. Citizenship
and Immigration
Services**

H2

[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES, CA

Date: MAR 27 2007

[relates]

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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), as an alien convicted of a crime involving moral turpitude. The record indicates that the applicant is the spouse of a United States citizen and that he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 wife and United States citizen child.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's wife and child and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director Decision*, dated June 28, 2005. Additionally, the District Director found the applicant "had approximately two years unlawful presence," from October 1996 to April 1999, and he used the name [REDACTED] on the Record of Deportable/Inadmissible Alien (Form I-213), which is not the applicant's true name. *Id.*¹

On appeal, the applicant, through counsel, asserts that the District Director "failed to consider the cumulative effects of the factors presented which will result in 'extreme hardship' to the applicant's U.S. citizen spouse and child. While no one factor standing alone may qualify, the cumulative effects of all factors together should be considered sufficient." *Form I-290B*, filed July 28, 2005.

The record includes, but is not limited to, counsel's brief, an affidavit from the applicant's spouse, the court dispositions from the Superior Court, State of California, County of San Barbara, relating to the applicant's conviction for battery upon a spouse/cohabitant, the birth certificate for the applicant's United States citizen child, and photos of the applicant and his family. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a) of the Act provides, in pertinent part, that:

(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...

¹ The District Director found in addition to violating section 212(a)(2)(A)(i)(I) of the Act, the applicant violated sections 212(a)(9)(B) and 212(a)(6)(C) of the Act, for unlawful presence and misrepresentation. The waivers for each ground of inadmissibility all require the applicant to demonstrate extreme hardship to a qualifying relative, which the District Director found the applicant failed to establish.

Section 212(h) of the Act provides, in pertinent part, that:

(h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in his discretion, waive the application of subparagraphs (A)(i)(I)...of subsection (a)(2) if—

(1) (A) in the case of any immigrant it is established to the satisfaction of the [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 established to the satisfaction of the [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...

(2) the [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien’s applying or reapplying for a visa, for admission to the United States, or adjustment of status.

In the present application, the record indicates that the applicant initially entered the United States without inspection in January 1995. On April 21, 1999, the applicant was charged with the crime of battery, in violation of California Penal Code section 243(e)(1), in which he used force and violence on a spouse or a person with whom he was residing. The applicant used the name [REDACTED] for this crime. On April 23, 1999, the applicant was found guilty of battery by the Superior Court, County of Santa Barbara, and sentenced to three (3) years probation. On April 29, 1999, the applicant, using the name [REDACTED]” was voluntarily removed from the United States to Mexico.² On March 17, 2001, the applicant married [REDACTED] a United States citizen, in Ventura, California. On April

² The alien registration number for this case is [REDACTED]

30, 2001, the applicant filed a Form I-130. On June 28, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On November 15, 2001, the applicant and his wife had a son. On April 26, 2002, the applicant's Form I-130 was approved. On February 15, 2005, the applicant filed a Form I-601. On June 28, 2005, the District Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to his spouse and child.

The applicant is seeking a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act. A waiver under section 212(h) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent or child of the applicant. Hardship the alien himself experiences upon removal is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen spouse and child. 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 applicant's wife states "[i]t would be a tremendous hardship on [her] son if [the applicant] is not allowed to stay in this country." *Declaration of* [REDACTED] dated February 1, 2005. The applicant's wife claims that "[j]ust the thought of losing [the applicant] causes [her] a great deal of anxiety, stress, and depression." *Id.* The AAO notes that there are no professional psychological evaluations to review to determine what personal issues are affecting the applicant's wife's emotional and psychological wellbeing. Counsel claims that the applicant's "wife, child and her parents all have strong emotional attachments to one another and it would be devastating to break up the family...This is a very close family and the forced separation of the family would definitely cause 'extreme hardship' to both the spouse and child." *Appeal Brief*, page 4, filed August 31, 2005. The applicant's spouse states if the applicant "is forced to go to Mexico, [she] will have a terrible dilemma." *Declaration of* [REDACTED], *supra*. She states she does not want to be separated from the applicant, but she knows it will be difficult to live in Mexico.

The applicant does not establish extreme hardship to his United States citizen spouse and child if they remain in the United States or if they join him in Mexico. The AAO notes the applicant's spouse's parents are both from Mexico, and she failed to demonstrate whether or not they have any other family ties in Mexico. Additionally, it has not been established that the applicant's child, who is 4 years old, would have difficulties rising to the level of extreme hardship in adjusting to the culture of Mexico. The AAO, therefore, finds the applicant has failed to establish extreme hardship to his spouse if she accompanies him to the Mexico.

The AAO notes that the applicant's spouse is employed full-time and she resides with her parents. If the applicant's spouse remains in the United States, there is no evidence in the record that her parents could not help her with taking care of their grandson. As United States citizens, the applicant's spouse and child are not required to reside outside of the United States as a result of denial of the applicant's waiver request. Additionally, beyond generalized assertions regarding country conditions in Mexico, the record fails to demonstrate that the applicant will be unable to contribute to his family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan, supra*, the Ninth Circuit 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 child 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 and child 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(a)(2)(A) 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.