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 (SANTA ANA) Date: MAY 22 2007

IN RE: [redacted]

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:

[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, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant, a citizen of Mexico, was found 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 United States permanent resident, the father of three United States citizen children, and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his wife and family.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant contends that his wife and family would suffer extreme hardship if he were required to return to Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2) of the Act provides, in pertinent part:

> (A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
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> (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:

> (h) The Attorney General [now Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> . . .
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> (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 . . . .[1]

[1] The AAO notes that section 212(h) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, CIS must then assess whether to exercise discretion.

Regarding the applicant's grounds of inadmissibility, the record reflects the commission of several crimes involving moral turpitude.[2] On November 8, 2004, he pleaded guilty to three charges: (1) corporal injury inflicted upon a family member resulting in traumatic condition; (2) cruelty to a child; and (3) assault. The applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, on August 19, 2003. The instant Form I-601 was filed on April 6, 2006.

The District Director found the applicant inadmissible based upon the applicant's commission of these crimes involving moral turpitude. As these crimes were committed after the applicant's eighteenth birthday, the district director correctly found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest this finding.

On appeal, counsel contends that the District Director erred in failing to find that the applicant had not demonstrated that extreme hardship would befall a qualifying relative. Specifically, counsel contends that the District Director failed to consider the evidence of record regarding the hardship that would befall the applicant's family should he depart the United States.

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, 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.

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 *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally 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.

The record reflects that the applicant's wife is a thirty-eight-year-old permanent resident of the United States. She and the applicant have been married since September 23, 2002, and have three United States citizen children who are fourteen, eleven, and eight years old. Additionally, the record establishes that the couple has a nineteen-year-old daughter who was born in Mexico.[3] Her immigration status was not specified.

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[2] The AAO notes that the applicant does not dispute the director's finding that these offenses constituted crimes involving moral turpitude.

[3] The AAO notes that the applicant's tax returns claim a son as a dependent. However, no information regarding this son was provided, and he is mentioned nowhere else in the record.

The record contains an affidavit from the applicant, dated November 2005. The applicant states that if he were separated from his family they would not have economic support; that the family would be sad if he returned to Mexico; and that, while he knows he committed an error, he hopes that he will not commit an error again.

The record also contains an affidavit from the applicant's wife, dated November 2005. She states that the family would be sad if the applicant were deported, as he is very attached to his family; that she does not want to see her family separated; that the applicant would lose his job, which he has held for many years, if he were deported; she asks that Citizenship and Immigration Services "be a little sensible" with this applicant; and states that the applicant brings in money for the household.

The record also contains an affidavit from one the applicant's daughters, dated November 2005. The applicant's daughter states that she would suffer if the applicant were deported, because she would not have a father; that she would be sad if he were not in the United States; that the applicant is important to her in many ways; and that, while she knows he has done bad things in the past, she has forgiven him because he is her father.

The record also contains a letter from the family's parish priest attesting to the applicant's good behavior and work as a volunteer at the parish. The record also contains a letter from the applicant's employer stating that he is reliable, loyal, and honest.

The applicant works forty hours per week at a furniture store, and earns $16 per hour. He also owns a landscaping company. According to the most recent tax return in the record (for tax year 2004), the family had a gross adjusted income of $39,942, of which $5,488 came from the applicant's landscaping company. At a rate of $16 per hour, forty hours per week, it appears from the record that the applicant provided the family's sole source of income.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS,* 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

However, particularly in the Ninth Circuit, courts have recognized that, in certain cases, economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme. "Included among these are the personal hardships which flow naturally from an economic loss decreased health care, educational opportunities, and general material welfare." *Mejia-Carrillo v. INS,* 656 F.2d 520, 522 (9th cir. 1981) (citations omitted); *see also Santana-Figueroa v. INS*, 644 F.2d 1354, 1358 (9th cir. 1981) ("Economic loss often accompanies deportation. Even a significant reduction in standard of living is not, by itself, a basis for relief. . . . But deportation may also result in the loss of all

that makes life possible. When an alien would be deprived of the means to survive, or condemned to exist in life-threatening squalor, the "economic" character of the hardship makes it no less severe.") The AAO notes that this matter arises in the Los Angeles District Office, which is within the jurisdiction of the Ninth Circuit Court of Appeals.

The Ninth Circuit Court of Appeals has stated that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

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 wife and daughters would face extreme hardship if the applicant's waiver application is denied. Particularly if they remain in the United States without the applicant, the record demonstrates that they would 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 or refused admission. Although CIS is not insensitive to their situation, the financial strain of visiting the applicant in Mexico and the emotional hardship of separation are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law. Nor is there any evidence in the record to demonstrate that she would face extreme hardship if they were to move to Mexico with the applicant; the evidence of record only addresses why the family cannot remain in the United States without him.

In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States 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 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th 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 has failed to establish extreme hardship to his United States permanent resident spouse and citizen daughters as required under INA § 212(h), 8 U.S.C. § 1186(h).

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden.

ORDER: The appeal is dismissed. The waiver application is denied.