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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: SACRAMENTO

Date: SEP 11 2008

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 Field Office Director, Sacramento, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Russia 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 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.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 30, 2008.

On appeal, counsel for the applicant contends that the applicant's U.S. citizen mother and sons will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel*, dated June 24, 2008.

The record contains a brief from counsel; copies of birth certificates for the applicant and the applicant's sons; statements from the applicant's mother and girlfriend; documentation in connection with the applicant's education; a copy of a note from the daycare that provides services for the applicant's son; copies of medical documents for the applicant's grandmother; a copy of the applicant's passport; a copy of the applicant's mother's naturalization certificate; a copy of the applicant's mother's tax records, and; documentation in connection with the applicant's criminal convictions. The entire record was reviewed and considered in rendering this decision.

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

- (A)(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.
  
- (B) Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

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

(h) The Attorney General [now Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) [or] (B) . . . 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 [now the Secretary of Homeland Security (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 record reflects that the applicant has been convicted of five crimes between October 31, 1997 and September 7, 2004. At least four of these offenses constitute crimes involving moral turpitude (Petty Theft under California PC 484(a); Writing a Check with Intent to Defraud under California PC 476A; Taking a Vehicle without Owner's Consent under California VC 10851, and Petty Theft with Priors under California PC 666.) Accordingly, the applicant was found inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest his inadmissibility on appeal.

Section 212(h)(1)(B) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. Hardship the applicant himself experiences due to his inadmissibility is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen mother and sons. *Id.* If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) 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.

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).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998), held that, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and 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.” (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant’s mother and sons will possibly remain in the United States if the applicant departs. Separation of family will therefore be carefully considered in the assessment of hardship factors in the present case.

On appeal, counsel contends that the applicant’s sons and mother will experience extreme hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel* at 9. Counsel explains that the applicant’s mother cares for the applicant’s grandmother, and that the applicant assists with this care. *Id.* at 3. Counsel states that the applicant’s mother also cares for her husband, the applicant’s step-father, and that the applicant helps her by running errands and shopping. *Id.* at 3-4. Counsel contends that without the applicant’s help, the applicant’s mother would experience hardship due to providing care for her mother and husband alone. *Id.*

The applicant’s mother states that she is paid by Sacramento County to provide care for the applicant’s grandmother, who has a feeding tube and a tracheotomy. *Statement from Applicant’s Mother*, dated April 13, 2008.

Counsel asserts that the applicant’s mother could only make infrequent trips to visit the applicant abroad, and that separation would be “devastating.” *Brief from Counsel* at 4. Thus, counsel contends that the applicant’s mother would endure significant emotional hardship should the present waiver application be denied. *Id.* The applicant’s mother provides that the applicant is her only child, and they are close. *Statement from Applicant’s Mother* at 2.

Counsel further discusses the applicant’s lack of connections to Russia, and hardship he would experience if he is compelled to depart the United States. *Brief from Counsel* at 5-6.

Counsel indicates that the applicant’s two U.S. citizen sons will experience hardship if the applicant relocates abroad. *Id.* at 6. Counsel references the applicant’s participation in the care of his sons, including taking them to daycare, changing diapers, bathing and feeding them. *Id.* The applicant’s girlfriend, who is the mother of his two sons, states that the applicant resides with her and participates in childcare and home chores. *Statement from Applicant’s Girlfriend*, dated November 17, 2007. She provides that the applicant contributes to the economic needs of their household. *Id.* at 1.

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship should the present waiver application be denied. Counsel contends that the applicant’s mother will experience extreme hardship in the applicant’s absence. The applicant’s mother cares for the applicant’s grandmother. While the record reflects that the applicant’s grandmother in fact requires significant care, the record does not support that the applicant’s mother relies on the applicant in this regard to the extent that she would experience extreme hardship without his assistance. The applicant’s mother is paid by Sacramento

County to provide services to the applicant's grandmother. The applicant has not asserted or shown that his mother has other employment or significant demands on her time which prevent her from meeting the needs of the applicant's grandmother. The applicant's mother explained that she also provides care for her disabled husband, yet the record contains no documentation to show that the applicant's stepfather is disabled or that he requires care. Accordingly, the applicant has not shown that his mother would experience significant hardship without the applicant's assistance in her care giving responsibilities.

The applicant's mother expresses that she would experience emotional hardship if she is separated from the applicant. She indicated that she would be unable to visit the applicant frequently. The AAO acknowledges that the applicant's mother will endure emotional consequences as a result of the applicant's departure from the United States. However, the applicant has not shown that his mother's emotional consequences due to separation would rise above that which would ordinarily be expected of family members separated due to inadmissibility. 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 applicant has not referenced any other hardships to his mother should he depart the United States. Considered in aggregate, the hardships that will be experienced by the applicant's mother do not rise to the level of extreme hardship as contemplated by section 212(h) of the Act.

Counsel contends that the applicant's two sons will experience extreme hardship should they be separated from the applicant. The applicant's girlfriend explained that she, the applicant, and the applicant's sons reside in the same household. She stated that the applicant participates in the care for his sons and that he contributes to the economic needs of the home. However, the applicant has not described any circumstances that reflect that his girlfriend requires his assistance to care for their sons. The applicant's girlfriend provided that the applicant contributes to the economic needs of their household, yet the applicant has not submitted any evidence of his income. It is noted that the applicant's mother claimed that the applicant was her financial dependent in 2006, which suggests that the applicant was unable to meet his own economic needs during that period. *2006 IRS Form 1040 for the Applicant's Mother*. The applicant has not established that his income status changed since 2006. The AAO acknowledges that acting as a single parent is an arduous task, yet the applicant has not shown that his absence would impact the care of his sons to the degree that they would experience extreme hardship should the present waiver application be denied.

It is understood that the applicant's sons would experience some emotional hardship due to being separated from the applicant. However, the applicant has not shown that their hardships, considered in aggregate, would constitute extreme hardship. Section 212(h) of the Act.

Statements from counsel and the applicant's mother suggest that the applicant's mother would not relocate abroad with the applicant to maintain family separation, as she would endure significant challenges and hardship. However, as the applicant has not shown that his mother would experience extreme hardship should she remain in the United States, the applicant has not shown that denial of the present application "would result in extreme hardship" to his mother, as required by section 212(h)(1)(B) of the Act.

The record further suggests that the applicant would not take his sons with him should he depart the United States. However, as the applicant has not shown that his sons would experience extreme hardship should they remain in the United States, the applicant has not shown that denial of the present application "would result in extreme hardship" to his sons. 212(h)(1)(B) of the Act.

Based on the foregoing, the applicant has not shown that, should he be prohibited from remaining in the United States, his family members will suffer emotional hardship that is unusual or beyond that which would normally be expected upon deportation. The applicant has not established that his mother's care giving responsibilities will result in extreme hardship due to his inadmissibility. Thus, the documentation in the record fails to establish the existence of extreme hardship to the applicant's mother or sons 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.<sup>1</sup>

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.

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<sup>1</sup> It is noted that counsel asserted that the field office director erred in not evaluating discretionary factors that weigh in the applicant's favor. Yet, unless the applicant establishes that a qualifying relative will experience extreme hardship, the Secretary lacks discretion to approve the waiver application and an assessment of discretionary factors is not warranted. Section 212(h)(1) of the Act