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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CHICAGO, ILLINOIS

Date: **JAN 28 2009**

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 PETITIONER:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois, 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 has resided in the United States since June 10, 1999 when he was admitted as a B2 visitor for pleasure. He was found to be inadmissible 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 a crime involving moral turpitude (robbery). The applicant is married to a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. 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 with his spouse and daughters.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of District Director* dated February 16, 2006.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) abused its discretion by failing to consider all the evidence of hardship to the applicant's wife and daughters. Specifically, counsel states that USCIS failed to adequately consider the evidence on the record or provide a reasoned explanation for this finding. In support of the waiver application, counsel submitted copies of the applicant's marriage certificate, his wife's birth certificate, copies of his daughters' birth certificates, and letters from the applicant's employers. The entire record was reviewed and considered in arriving at a decision on the 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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) states in pertinent part:

- (h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-
 - (1)(A) [I]t is established to the satisfaction of the Attorney General that-
 - (i) [T]his 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 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 applicant was convicted of two counts of robbery on October 7, 1996 in Cook County, Illinois, and was sentenced to four years of probation. The offense for which the applicant was convicted took place on March 26, 1995. Since less than fifteen years has passed since the conduct for which the applicant was convicted, he is not eligible for a waiver under section 212(h)(1)(A) of the Act, but may seek a waiver under section 212(h)(1)(B) 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.

U.S. court decisions have additionally 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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 *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court 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.

In the present case, the record reflects that the applicant is a thirty-two year-old native and citizen of Mexico who has resided in the United States since 1992, when he entered the country without inspection. The applicant's wife is a twenty-six year-old native and citizen of the United States

whom the applicant married on November 11, 2000. The applicant and his wife currently reside in Evanston, Illinois, with their two daughters.

Counsel for the applicant states that long-term separation of the applicant from his spouse and children would cause them to suffer unusual and extreme hardship because they have “started to build a life together” and their “plans for the future would suffer a terrible setback once he is ordered removed.” *Counsel’s letter in support of I-601 Application* at 2. Counsel further states,

The two minor children will likewise, suffer from the separation. They would be deprived of the love, care, support and guidance of their father, all of which are crucial in early, formative years of the children’s growth. *Id.*

Counsel asserts that the applicant’s wife and daughters would suffer extreme emotional hardship if he is removed from the United States, but there is no evidence on the record concerning any emotional hardship they would suffer, such as evidence concerning their mental health or the potential emotional or psychological effects of the separation. The evidence on the record does not establish that the emotional effects of separation from the applicant would be more serious than the type of hardship a family member would normally suffer when faced with the prospect of a spouse’s or parent’s removal or exclusion. Although the depth of their distress over the prospect of being separated from the applicant is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But 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 exists.

Counsel further states that the applicant’s wife would be unable to financially support herself and their two children if the applicant is removed from the United States. Counsel states,

She will have to meet all the expenses relating to food, shelter and clothing and other basic needs of the family. She presently works for Avon . . . and earns \$14.90/hr. They own a house and have a mortgage and homeowners insurance to pay each month. They own two cars and there are car insurance premiums to be paid, as well. . . . Her income will not be enough to cover all these expenses. *Counsel’s letter in support of I-601 Application* at 2.

Counsel further states that the applicant is the family’s main source of income and they will be economically “devastated” if he is removed. *Id.* The AAO notes that no documentation concerning the applicant’s wife’s income and employment or the family’s expenses was submitted to support an assertion that the applicant’s family members would suffer financial hardship as a result of separation from the applicant. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, there is no indication that there are any unusual circumstances that would cause financial hardship beyond what

would normally be expected as a result of the applicant's removal. The financial impact of the loss of the applicant's income therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's wife and daughters. *See INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The emotional and financial hardship the applicant's wife and daughters would experience if he is removed and they remain in the United States appears to be the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *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). No information or evidence was submitted to support a claim that the applicant's wife and daughters would suffer extreme hardship if they relocated to Mexico with the applicant. Therefore, the AAO cannot make a determination of whether the applicant's family members would suffer extreme hardship if they moved to Mexico.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse or children as required under section 212(h) of the Act.

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. 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.