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U.S. Citizenship  
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FILE: [REDACTED] Office: LOS ANGELES, CALIFORNIA

Date: JUN 02 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).

John F. Grisson,  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles, California, 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 last entered the United States in 1990, when she entered without inspection. She 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 (theft). 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 her spouse and children.

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 July 24, 2006.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) erred in determining that the applicant's removal would not result in extreme hardship to her husband or adult children. Specifically, counsel states that USCIS failed to adequately consider all of the relevant hardship factors in the aggregate, including the emotional and financial hardship the applicant's family members would experience if she were removed to Mexico. *Brief in Support of Appeal* at 4-5. Counsel additionally asserts that USCIS erroneously applied a heightened standard in analyzing the hardship in the case. *Brief* at 6. In support of the waiver application and appeal, counsel submitted letters from the applicant and her husband, letters from the applicant's sons and daughter, a letter and other documents from the applicant's employer, medical records for the applicant, financial documents including bank statements and copies of bills, income tax returns for the applicant and her husband, and a psychological evaluation of the applicant's husband. 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 theft of property on January 20, 1995 and on May 18, 1999 in Los Angeles County, California. Since the applicant was convicted of two crimes involving moral turpitude, she does not qualify for the "petty offense" exception in section 212(a)(2)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(ii)(II). The applicant is therefore inadmissible under section 212(a)(2)(A)(i)(I) of the Act, and since a period of less than fifteen years has passed since the conduct for which she was convicted, she 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. The BIA has further stated:

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 has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[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 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). 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).

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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 fifty-three year-old native and citizen of Mexico who has resided in the United States since 1990, when she entered the country without inspection. The applicant’s husband is a fifty-six year-old native of Mexico and citizen of the United States whom the applicant married on January 26, 1974. The applicant and his wife currently reside in West Covina, California with their two sons, who are twenty-six and twenty-eight years old. The record further indicates that their adult daughter and her three children also resided with them until shortly before the appeal was filed, and she is believed to have traveled to Mexico with her children.

The applicant’s husband states that he met the applicant when he was eighteen years old and asked her to marry him one year later. He states,

Ever since I met my wife, she has been a great emotional support for me. For the past 32 years she has been the only one who has been there for me day in and day out. My wife is the backbone of our family. If I lose my wife to deportation, my whole world would be in disorder. . . . I do not know if I would be able to take care of myself, as my wife had taken care of me for the past 32 years. *Declaration of* [REDACTED] dated September 20, 2006.

The applicant’s husband further states that he had a drinking problem when he was younger and the applicant helped him overcome this problem through her emotional support. He further states that he has been under stress because their adult daughter and her children have gone missing on a few occasions, which causes him great stress, and he fears that without the applicant there to calm him down, he would turn to alcohol again. *Declaration of* [REDACTED] dated September 20, 2006. He additionally states that he works as a real estate agent, and that for the past two years he has been

unable to support the family due to a volatile real estate market, and he relies on the applicant's income to pay the family's expenses. *Declaration of* [REDACTED] dated September 20, 2006. A 2005 income tax return indicates that the applicant's husband owned a business that lost money and he sold the business that year. Counsel submitted pay stubs and a letter from the applicant's employer with the waiver application, and it appears that wages of about \$16,000 reported on the 2005 income tax return were earned by the applicant.

It appears that separation from the applicant, in light of the length of their marriage, the stress caused by their daughter's departure, and his dependence on the applicant for emotional and financial support, would cause the applicant's husband emotional distress beyond the common results of deportation and would amount to extreme hardship if he remained in the United States without the applicant. As noted above, separation from close family members is a primary concern in assessing extreme hardship. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998).

The applicant's husband states that he is afraid that if either he or the applicant were to move to Mexico, the health care system would be unable to provide them with the medical care they would need. He further states that they have nothing in Mexico, and that the few family members the applicant has in Mexico would be unable to provide any financial support due to their own financial situation. *Declaration of* [REDACTED] dated September 20, 2006. No evidence was submitted concerning conditions in Mexico or access to health care there to support the assertions of the applicant's husband that he and the applicant would not receive medical care there or that they would be unable to find employment and support themselves financially. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). 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. Although it appears likely that the applicant's husband would experience a decline in standard of living due to loss of income in the United States, these effects on his financial situation appear to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The applicant's husband states that the thought of losing his home, family, and way of life is very stressful and has resulted in symptoms including difficulty sleeping, tightness in his chest, low energy, and poor concentration. *Declaration of* [REDACTED] dated September 20, 2006. A psychological evaluation of the applicant's husband states that his symptoms were "consistent with an adjustment disorder, with mixed anxiety and depression," and further states that a forced separation from the applicant would likely exacerbate these feelings and lead to a major depressive episode. See *Psychological Evaluation from* [REDACTED] dated August 21, 2006.

The input of any mental health professional is respected and valuable in assessing a claim of emotional hardship. However, the AAO notes that although the submitted letter is based on a psychological evaluation of the applicant's husband, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's husband or any history of

treatment for depression or anxiety. The conclusions reached in the submitted evaluation, being based on one interview, do not reflect the insight that would result from an established relationship with the psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Further, there is no evidence submitted that [REDACTED] or any other mental health professional provided any follow-up treatment, despite the diagnosis of a possible adjustment disorder. In addition, although the psychological evaluation of the applicant's husband states that he would likely suffer a major depressive episode if separated from the applicant, the evaluation does not specifically address how relocation to Mexico with the applicant would affect her husband.

Based on the evidence on the record, the emotional hardship and other difficulties that the applicant's husband would suffer if he relocated to Mexico with the applicant appears to be the type of hardships that family members 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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).

Counsel additionally asserts that the applicant's sons would suffer financial and emotional hardship if the applicant were removed to Mexico. Counsel states,

a housekeeper in a convalescent home, has been providing the income to pay the mortgage on the house that [REDACTED] and [REDACTED] live in. Without steady flow of income, [REDACTED] will not be able to pay the mortgage, put food on the table, or provide for other necessities of life. *Brief* at 10.

Both of the applicant's sons state that if they could not live in their parents' home they do not know where they would live, and further state that they would have to hire a housekeeper and babysitter if their mother relocated to Mexico. *See letters from [REDACTED] and [REDACTED] dated September 20, 2006.* The evidence on the record indicates that the applicant is currently employed, but there is no documentation concerning any income earned by the applicant's adult children nor any explanation of why they would be unable to work and financially support themselves. Further, even if the loss of the applicant's income would have a negative impact of the financial situation of her adult children, the U.S. Supreme Court held in *INS v. Jong Ha Wang, supra*, that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The applicant's son [REDACTED] states that that the applicant is his best friend and mentor, keeps everyone in their household happy, and that he and the applicant's grandchildren would lose out on the great morals and ethics the applicant has taught them. *Undated letter from [REDACTED]* Her son [REDACTED] states that she baby-sits for his daughter when he works or runs errands and also cooks, does their laundry, and teaches the grandchildren about family traditions. *Undated letter from [REDACTED]* There is no evidence that the applicant's sons or daughter would suffer emotional hardship if she relocated to Mexico and they remained in the United States, 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 parent's removal or exclusion. Although the depth of their distress over the prospect of being separated from their mother 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.

The emotional and financial hardship the applicant's adult children would experience if she is removed from the United States appears to be the type of hardship that a family member would normally suffer as a result of deportation or exclusion. As noted above, U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. No claim was made that the applicant's children would suffer extreme hardship if they relocated to Mexico with the applicant. Therefore, the AAO cannot make a determination of whether the applicant's children 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 her 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.