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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services



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FILE:



Office: LOS ANGELES, CALIFORNIA

JUN 08 2009
Date:

IN RE:

Applicant:



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:



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. Grissom
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 record reflects that the applicant is a native and citizen of Belize whose mother and three children are U.S. citizens. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative that his mother filed as petitioner. The district director found the applicant 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 committed a crime 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 reside in the United States with his mother and children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on his qualifying relatives and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated February 26, 2007.

In the present application, the record indicates that the applicant entered the United States without inspection in 1982. In 1985, the applicant made a fake and fraudulent United States Virgin Islands birth certificate in order to join the United States Navy. The applicant served in the United States Navy from April 16, 1985 until March 31, 1993. On April 15, 1993, the applicant's mother, a lawful permanent resident of the United States at that time, filed a Form I-130 on behalf of the applicant. On April 26, 1993, the applicant's Form I-130 was approved.

On May 9, 1997, the applicant filed an Application for Naturalization (Form N-400), which was denied. On September 15, 2000, the applicant's mother became a United States citizen. On March 12, 2004, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On February 3, 2005, the applicant filed a Form I-601. On February 26, 2007, the District Director denied the applicant's Form I-601, finding that the applicant failed to demonstrate extreme hardship to his qualifying relatives.

The record reflects that the District Director partially based her decision to deny the applicant's Form I-601 on the applicant's false claim to United States citizenship; however, it is unclear if the District Director determined that the applicant was actually inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

(i) In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

(ii) Falsely claiming citizenship.—

(I) In general

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

(iii) Waiver authorized.—For provision authorizing waiver of clause (i), see subsection (i).

The AAO notes that aliens making false claims to United States citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act. Provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) afford aliens in the applicant's position, those making false claims to United States citizenship prior to September 30, 1996, the eligibility to apply for a waiver.

In considering a case where a false claim to U.S. citizenship has been made, Service [now United States Citizenship and Immigration Service, "USCIS"] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, [USCIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.

The AAO finds that since the applicant's false claim to United States citizenship was not made in order to procure an immigration benefit under the Act, but to serve in the United States Navy, he is not inadmissible under section 212(a)(6)(C)(i) of the Act.

Whether the applicant is inadmissible for having been convicted of a crime involving moral turpitude is the remaining determination pertinent to inadmissibility. The record shows that, on December 25, 1993, the applicant was arrested for a violation of section 187 of the California Penal Code (CPC), murder. On March 6, 1995, the applicant was convicted, pursuant to his plea, of involuntary manslaughter, in violation of section 192(b) of the CPC, and of using a firearm in the commission of a felony or attempted felony, in violation of section 12022.5(a) of the CPC, and was sentenced to five years imprisonment, with three years stayed pending successful completion of the first two years.

CPC § 12022.5(a) states:

(a) Except as provided in subdivision (b), any person who personally uses a firearm in the commission of a felony or attempted felony shall be punished by an additional and

consecutive term of imprisonment in the state prison for 3, 4, or 10 years, unless use of a firearm is an element of that offense.

CPC § 192 states:

Manslaughter is the unlawful killing of a human being without malice. It is of three kinds:

- (a) Voluntary -- upon a sudden quarrel or heat of passion.
- (b) Involuntary-in the commission of an unlawful act, not amounting to felony, or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection
- (c) Vehicular

In the instant case, the applicant was convicted of a violation of CPC § 192(b), involuntary manslaughter.¹ One issue in this case is whether that conviction is a conviction of a crime involving moral turpitude. On appeal, counsel noted that involuntary manslaughter is different from murder,² but did not address whether a involuntary manslaughter pursuant to section 192(b) is a crime involving moral turpitude.

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

¹ Although a docket entry indicates that the applicant was convicted of a violation of CPC § 192(a), a minute order from the Superior Court of California, County of Los Angeles, dated April 7, 1995, makes clear that the court convicted the applicant of a violation of section 192(b), and that all indications to the contrary are incorrect.

² The decision denying the applicant's waiver application misstated that the applicant had been convicted of murder.

In the recently decided *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a “realistic probability, not a theoretical possibility,” that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where, at the time of the proceeding, an “actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien’s own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude.” *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, “the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude.” *Silva-Trevino*, 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. *Id.* at 699-704, 708-709. However, this “does not mean that the parties would be free to present any and all evidence bearing on an alien’s conduct leading to the conviction. (Citation omitted.) The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself.” *Id.* at 703. Finally, in all such inquiries, the burden is on the alien to establish “clearly and beyond doubt” that he is “not inadmissible.” *Id.* at 709 (citing *Kirong v. Mukasey*, 529 F.3d 800 (8th Cir. 2008)).

California courts have periodically addressed the *mens rea* required for a conviction of involuntary manslaughter under section 192 of the CPC, and made clear that it is not a crime of ordinary negligence.

The phrase “without due caution and circumspection” within this section is equivalent to “criminal negligence.” *Somers v. Superior Court In and For Sacramento County*, 108 Cal.Rptr. 630, 32 Cal.App.3d 961 (1973); *People v. Penny*, 285 P.2d 926, 44 Cal.2d 861 (1955).

Criminal negligence, such as will support involuntary manslaughter charge, is of higher order of culpability than ordinary civil negligence and is measured objectively: if reasonable person would have been aware of risk, then defendant is presumed to have had that awareness. *Sea Horse Ranch, Inc. v. Superior Court*, 30 Cal.Rptr.2d 681, 24 Cal.App.4th 446 (App. 1 Dist. 1994), as modified, modified on denial of rehearing, review denied.

In order to support a conviction of involuntary manslaughter of the negligent variety, the negligence must be aggravated, culpable, gross or reckless, amounting to a disregard of human life or an indifference to consequences, and ordinary carelessness will not suffice. *People v. Wright*, 131 Cal.Rptr. 311, 60 Cal.App.3d 6 (App. 3 Dist. 1976).

The gravamen of involuntary manslaughter is a killing in the commission of act without due caution or circumspection, or, in other words, conduct which consists of disregard of human life or indifference to consequences. *People v. Morales*, 122 Cal.Rptr. 157, 49 Cal.App.3d 134 (App. 4 Dist. 1975).

A killing is “unlawful” as required for involuntary manslaughter if it occurs (1) during the commission of a misdemeanor inherently dangerous to human life, or (2) in the commission of an act ordinarily lawful but which involves a high risk of death or bodily harm, and which is done without due caution or circumspection. *People v. Murray*, 84 Cal.Rptr.3d 676, 167 Cal.App.4th 1133 (App. 3 Dist. 2008), review denied.

The AAO notes that where an involuntary manslaughter statute requires recklessness, it has been determined to be a crime involving moral turpitude. *See Franklin v. INS*, 72 F.3d 571 (8th Cir. 1995). Thus, the AAO finds, given the construction accorded the language of CPC § 192(b) by California courts, that a conviction pursuant to that statute is a crime involving moral turpitude.

The AAO finds that because the applicant was convicted of a crime involving moral turpitude when he was over 18 years old and does not otherwise qualify for the petty offense exception, he is inadmissible pursuant to Section 212(a)(2)(A).

Because this conviction of a involuntary manslaughter is a crime involving moral turpitude, and is sufficient to render the applicant permanently inadmissible, the AAO will not engage in a detailed analysis of whether his conviction of using a firearm in the commission of a felony is also a conviction of a crime involving moral turpitude and sufficient, in itself, to render the applicant inadmissible. The balance of this decision will pertain to whether waiver of that inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

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

The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in his discretion, waive the application of subparagraph (A)(i)(I)

(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

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 (BIA1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a nonexclusive list of 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. The BIA has held:

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.)

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).

A waiver of inadmissibility under section 212(h) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant’s mother and children are the only qualifying relatives in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

In a declaration dated January 2005 the applicant’s mother stated that she had then lived with the applicant for six years, that she has heart problems and diabetes, that during 2002 she had a heart attack, and that she remains at high risk for a heart attack. The applicant’s mother stated that she typically has to see her doctor once every two months.

The applicant’s mother stated that she has had a total of seven surgeries, including bypass surgery during 2002, which the applicant paid for, and that the applicant cared for her during her convalescence. She stated that she requires a special diet which the applicant prepares for her, and that he also cleans and performs other household chores, pays the rent and utilities, and pays for her doctor’s bills and medication. She stated that she has episodes of leg pain, tachycardia, and angina pectoris, and she listed the drugs she takes for her conditions. She stated that she is unable to walk, to stand for long periods of time, or to lift anything heavy. She stated that she has blurred vision, is unable to drive, and has dizzy spells, fainting spells, and crying spells. She stated that she has had a total of seven surgeries.

The applicant's mother further stated that her husband does not have regular employment or medical insurance, but did not state whether he has any income. She stated that her husband is in removal proceedings, that he does not have medical insurance to cover her, and that, because he does not drive, he is unable to take her to the doctor. She stated that she has four surviving children, one of whom has heart problems, diabetes, and high cholesterol, one of whom has cancer and unspecified blood problems, and one of whom has health problems that the applicant's mother did not identify. The applicant's mother did not otherwise state why they would be unable to care for her in the applicant's absence.

As to the income of the applicant's mother and the mother's husband, the record contains a portion of the joint 2003 Form 1040 U.S. Individual Income Tax Return of the applicant's mother and her husband, and a 2003 1099 Miscellaneous Income form issued to the applicant's mother.

The Form 1099 shows that the applicant's mother received non-employee compensation of \$33,120. Line 12 of the Form 1040 shows that the applicant's mother and the mother's husband, together, declared business income of \$29,750, which was also their total income. Although the Schedule C that would have identified the source of that income was not included with the portion of that return that was provided, the source is likely a sole proprietorship of which the applicant's mother was then the proprietor, which received the amount shown on the Form 1099, and which, after it was reduced by the amount of the expenses to the business, was reported at Line 12 of the Form 1040. That return was not signed and contained no evidence that it was submitted to IRS. The record contains no other evidence pertinent to the income, or the lack of income, of the applicant's mother and the mother's husband.

In support of the applicant's mother's assertions of various illnesses, counsel submitted a letter, dated January 26, 2005, from the medical records director of her doctor's office. That letter states that the applicant's mother has been a patient since 1993 and has been treated for insulin-dependent diabetes, high-blood pressure, dyslipidemia, osteoporosis, degenerative joint disease, and angina pectoris. It states that she had a coronary bypass during 1992, but does not note any other surgeries. It indicates that she presented with angina and was hospitalized during July of 1992 and that tests were then performed. A hospital record pertinent to that hospitalization was also provided.

The January 26, 2005 letter lists the applicant's mother's medications and states that she has been diagnosed with uncontrolled diabetes, controlled high-blood pressure, eye problems, and dyslipidemia. It does not state the seriousness of those conditions or provide any evidence that they might require the applicant's presence in the United States.

That letter states that, due to a misunderstanding, the applicant's mother injected the wrong dose of insulin on October 18, 2004, which caused heart palpitations, and that she was referred for a holter monitor. It indicates that was the last occasion on which the applicant's mother was seen in that office.

In a declaration dated January 2005 the applicant stated that the mother of his two older children is dead; and that he provides all of the financial support for his children, and also takes care of himself, his mother, and his live-in girlfriend. The applicant further stated that the mother of his youngest child has no status in the United States, and that although she works, she does not earn an income sufficient to support their child.

The applicant stated that the family of the deceased mother of his two older children attempted to withhold custody from him after her death, even urging the children to withhold from the applicant the news of the death of their mother. He stated that he is therefore reluctant to leave those children with their late mother's family, as he believes that they will try to insulate the children from him. The applicant stated that, therefore, if he is forced to return to Belize he will take his two older children with him, as they have no one else in the United States to care for them, but that his youngest child would remain in the United States with her mother. He also noted that, if he goes to Belize with his two older children, the youngest child will be unable to be with her siblings.

In another statement, also dated January 2005, the applicant's son stated that he is very close to the applicant and loves him. He also stated that if he goes to Belize, he would be unable to visit his mother's grave, and would be separated from his friends and his younger sister. He stated that he does not wish to live with his mother's family.

In the brief on appeal, counsel noted evidence in the record that demonstrates that the mother of two of the applicant's three U.S. citizen children is dead, that they are very sensitive to the possibility of losing another parent, and that they would necessarily go to Belize with their father, which would require a very difficult adjustment. Counsel reiterated the applicant's statement that the mother of the applicant's third child has no status in the United States, but provided no evidence in support of that assertion. Counsel also stated that although the applicant's third child would remain in the United States with her mother, her mother is unable to support their child. Counsel offered no evidence pertinent to that mother's earning power. Counsel argued that, therefore, denying the instant waiver application would result in extreme hardship to the applicant's children.

Counsel noted the applicant's mother's medical problems and the assistance he renders as evidence that the applicant's mother would suffer extreme hardship if he were forced to leave the United States. Counsel asserted that, "In 2004, [the applicant's mother] tried to take her medication without her son's supervision, she gave herself the wrong dose." Counsel provided printouts of web content pertinent to type 2 diabetes, high-blood pressure, dyslipidemia, and angina pectoris. Counsel reiterated that the applicant's mother has had seven surgeries. The AAO notes that only one of those surgeries has been identified, and the evidence does not demonstrate that the applicant's mother had the other six operations.

Counsel stated that the applicant provides the sole financial support for himself, his three children, the surviving mother of one of his children,³ and his mother. Counsel provided no evidence of that assertion and did not address who supports the applicant's mother's husband. Counsel stated that because the applicant's brothers and sister have health issues, only the applicant is able to provide that support. Counsel provided no further detail pertinent to the alleged health problems of the applicant's brothers and sisters and no medical evidence of their existence or severity.

³ Counsel is apparently asserting that the live-in girlfriend whom the applicant claims to support is the mother of the applicant's third child. Although this may be so, the record does not support that assertion.

The applicant and counsel have stated that his mother is unable to support herself and the mother of his youngest child is unable to support the child, but provided insufficient evidence in support of those assertions. The record is insufficient to show that the applicant's mother cannot support herself, or that her husband is unable to support her, or that any of her other three surviving children is unable to support her. Likewise, the only evidence pertinent to the earnings of the mother of the applicant's youngest child is the applicant's statement that she is unable to support the child without him. There is not supporting evidence.

Similarly, although the applicant's mother has indicated that she is in grave physical condition, the evidence provided does not support that assessment. She has been diagnosed with type 2 diabetes, high blood pressure, elevated blood lipids, and angina, but the evidence contains little indication of the severity of her conditions. Although counsel blamed the administration of an incorrect dose of a medication to the applicant's mother on her attempt to administer her medicines without the applicant's supervision, the evidence provides little support for that version of events. The January 26, 2005 letter from the applicant's mother's doctor's office states,

Patient last seen in the Adult clinic, 10/18/04. **Complaint:** Injected wrong dose of insulin secondary to misunderstanding; heart palpitations.

That letter does not demonstrate that the applicant was absent when the medication was administered, that his absence caused his mother to administer the incorrect dose, or that his presence would have prevented that error.

The assertions of counsel are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Unsupported assertions of counsel are, therefore, insufficient to sustain the burden of proof.

Further, as with her financial support, the evidence contains insufficient evidence that none of the applicant's mother's other children could assist her with her medications, take her to her semi-monthly doctor's appointments, and provide the other household services the applicant now allegedly provides.

Clearly, the applicant's two oldest children would suffer some hardship if they were uprooted and taken to Belize. The record contains insufficient evidence, however, of the severity of that hardship. They would be unable to visit their mother's grave, and unable to associate with their younger sister and the friends in the United States. That sort of hardship, however, is typical of the experience of children obliged to move to another country as a consequence of the inadmissibility and/or removal of a parent.

Further, other than the applicant's statement, there is no evidence in the record that no suitable placement is available that would permit the applicant's children to remain in the United States, and the evidence is insufficient to show that, if they remained, they would suffer hardship that, combined with the other hardship factors in the case, would rise to the level of extreme hardship. Although the record suggests that the applicant's mother and surviving siblings are, to some degree, in ill health, it does not demonstrate that their conditions are so serious that they are rendered incapable of caring for a child.

This is especially so of the applicant's brother, [REDACTED] whom the applicant's mother stated "has health problems that cause him to be under a doctor's care." The record contains no other evidence pertinent to that brother's condition. The seriousness of that condition, and that it precludes him from assisting the applicant's children, is not demonstrated. Further, although the applicant's late wife's family appears to have some objection to the applicant, the evidence is insufficient to show that they failed to care for and nurture the children who were in their care.

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 mother or children face extreme hardship if the applicant is refused admission. Rather, the record suggests that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a parent or child is removed from the United States.

The record demonstrates that the applicant has loving family members who are concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than the normal, expected hardship involved in such cases.

U.S. 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.

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.

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen mother or any of this U.S. citizen children as required under INA § 212(h), 8 U.S.C. § 1186(h) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

ORDER: The appeal is dismissed.