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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] Office: LOS ANGELES, CA Date: **MAY 04 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 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, 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 applicant is a native and citizen of Mexico 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 two crimes involving moral turpitude. The applicant is the husband of a U.S. citizen, the father of three U.S. citizen children, and the stepfather of one U.S. citizen child. He seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his family.

The district director found that, based on the record, the applicant had 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. *District Director's Decision*, dated May 25, 2006.

On appeal, counsel contends that the district director ignored *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) by not giving adequate weight to the hardship that would be created by the applicant's separation from his family and that the district director failed to consider all of the record's hardship factors in the aggregate, as required by *Matter of O-J-O-*, 21 I&N Dec. 381(BIA 1996). Counsel further contends that the district director "improperly assessed and misapplied the case law" to the relevant facts, noting factual differences between the instant proceeding and the precedent decisions cited in the director's decision. *Brief on Appeal*, at 4-12.

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

- (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) of the Act provides, in pertinent part:

- (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -
 - (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 record reflects that, pursuant to *nolo contendere* pleas, the appellant was twice convicted, in 1999 and 2003, of inflicting corporal injury on his spouse, in violation of section 273.5(a) of the California Penal Code (CPC). See *Santa Clarita Municipal Court Records Nos. 3NE00150 and 9NE03163*; see also *Counsel's Letter of April 5, 2006*. In that the Board of Immigration Appeals (BIA) has determined that a conviction under section 273.5(a) of the CPC is a crime involving moral turpitude, the applicant is inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act and must seek a waiver under section 212(h). *Matter of Tran*, 21 I&N Dec. 291 (BIA 1996).

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 pursuant to section 212(i) of the Act. 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 age of the qualifying relative may be an additional relevant factor. See *Matter of Pilch*, 21 I&N Dec. 627, 630 (BIA 1996). In examining whether extreme hardship has been established, 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).

U.S. 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, *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 (9th 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.

It should be noted that, to establish extreme hardship to his qualifying relative, the applicant must demonstrate that the hardship would be suffered whether that qualifying relative relocates to Mexico to reside with him or remains in the United States. This is because a qualifying relative is not required to reside outside the United States based on the denial of an applicant's waiver request.

Further, 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).

The AAO notes counsel's comments regarding the consideration of family separation in this proceeding. It observes that this matter arises within the jurisdiction of the Ninth Circuit Court of Appeals, which 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, "[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). The AAO will, therefore, give separation of family the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

The AAO also notes counsel's concerns regarding the district director's reliance on precedent decisions with fact patterns unlike those in the present matter. The AAO finds a reading of the district director's decision to indicate that she cited the precedent decisions for their insight into the definition of extreme hardship, rather than as being factually similar to the present proceeding. The AAO also notes that the factual differences between the present proceeding and the cited precedent decisions, and indeed among those precedent decisions themselves, do not indicate that the district director failed to properly apply the legal principles that govern the evaluation of hardship factors in section 212(h) waiver proceedings.

The AAO now turns to a consideration of the record as it relates to extreme hardship.

In support of the applicant's claim to extreme hardship, the record of proceedings contains two affidavits from the applicant's spouse, [REDACTED], dated April 5, 2006 and October 3, 2006.

The first part of the extreme hardship analysis requires the applicant to establish that [REDACTED] or one of his children would experience extreme hardship if they relocated to Mexico with him. [REDACTED] states that her children's education would suffer "a severe disadvantage" if they were to move to Mexico. She asserts that, while they are all doing well in their U.S. schools, they would face a harsh adjustment if they were to transfer into the Mexico school system, as they are not conversant enough in educational Spanish to be able to read the textbooks and understand the teachers. [REDACTED] further asserts that she has no ties to Mexico other than the applicant's birth there, that she has everything invested in the United States, including her entire family, her home and her memories. She contends that moving to Mexico will result in a lower standard of living, and the loss of her job and the U.S. lifestyle and culture with which she has grown comfortable.

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.”); *Shoostary 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 and the separation from friends are also not considered extreme hardship but represent the type of 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). Accordingly, the AAO does not find the record to establish that [REDACTED] would experience extreme hardship if she moved to Mexico with the applicant.

It does, however, find the record to demonstrate that relocation to Mexico would result in extreme hardship to the applicant's stepson. In *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001), the Board of Immigration Appeals (BIA) found that a fifteen-year-old child who had lived her entire life in the United States, was completely integrated into the American lifestyle and was not fluent in Chinese would suffer extreme hardship if she were relocated to Taiwan. In the present matter, the applicant's stepson was born in the United States and has lived his entire life in the United States and [REDACTED] indicates that none of her children speak Spanish well enough to read Mexican textbooks or understand Mexican teachers. Therefore, based on the reasoning in *Matter of Kao and Lin*, the AAO finds the record to establish that the applicant's stepson would suffer extreme hardship if he were to relocate with his family to Mexico.

The second part of the extreme hardship analysis requires the applicant to establish that [REDACTED] or any of his four children would suffer extreme hardship if they were to remain in the United States following the denial of the applicant's waiver application. [REDACTED] asserts that the applicant's removal would cause extreme hardship to her children because they would lose a father's help and guidance as they grow and develop. She notes that the applicant's presence is particularly important for his stepson, [REDACTED], who is in a rebellious period and experiencing problems in school. She also relates her conviction that the applicant's relationship with her and the children is invaluable and irreplaceable, and that her children are of an age where they need a father's guidance.

[REDACTED] also contends that it is very unlikely that the applicant would be able to make enough money in Mexico to contribute to the support of the family and that she would be unable to raise their children on her salary alone. She notes that she and her husband both work and that they have arranged their work shifts so one of them will always be at home to look after the children. She states that she works as a nightshift clerk at Wal-Mart at the rate of \$11 per hour, while the applicant grosses about \$30,000 per year as a tow truck driver. [REDACTED] states that if the applicant were absent she would be forced to work the day shift at a lower rate of pay, earning approximately \$19,500 per year. [REDACTED] asserts that this amount would not even cover the \$19,878 childcare bill that she would owe if she were to enroll her younger children in childcare at Tutor Time Child Care/Learning Centers. [REDACTED] states that having to pay for childcare would leave her with nothing for food, rent, clothing, or medical care and that she would have to quit her work and go on

welfare. [REDACTED] also asserts that her family's future and their ability to eventually buy a home would be forfeit if her husband's U.S. income is lost.

While the AAO notes [REDACTED] claim that the applicant is unlikely to make enough money in Mexico to contribute to the family's financial well-being, the record contains no documentary evidence in support of this assertion. 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)). The AAO further notes that [REDACTED]'s calculation of the money that she would have to pay for three of her children to attend Tutor Time Child Care/Learning Center is not supported by documentary evidence and also that the record lacks evidence that attendance at this institution would be the only option open to her for childcare. While the adverse financial effects of the applicant's removal are factors to be considered in the aggregate with all other hardship factors, the record does not contain sufficient evidence to allow the AAO to measure the financial impact of the applicant's removal on his family.

The AAO notes the record's information about the behavioral problems of the applicant's stepson. However, the record lacks documentary evidence from appropriate and competent professionals to establish the nature and severity of the behavioral problems experienced by the applicant's stepson or the impact that the applicant's removal would have upon him. The AAO has also considered [REDACTED] statements about the emotional consequences of separation from the applicant on herself and her children. But, again, the record does not contain any documentation establishing that her or her children's reactions to the applicant's removal would be more severe than those normally associated with the removal of a spouse/parent from the United States.

The AAO has considered, both individually and in the aggregate, all of the hardship factors identified in the present application. However, when reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, the record does not support a finding that the applicant's spouse or any of the four children would face extreme hardship if the applicant's waiver application were denied. Rather, the record demonstrates that [REDACTED] and her children would experience the distress and upheaval routinely created by the enforced absence of a spouse/parent due to inadmissibility. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection, as well as emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary 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 did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(h) of the Act, be above and beyond the normal, expected hardship involved in such cases. Accordingly, the applicant has not established that [REDACTED] or any of his children would suffer extreme hardship if they remain in the United States while he lives outside the United States as a consequence of his inadmissibility.

As the evidence has not established that [REDACTED] or her children would face extreme hardship if the waiver request were denied, the applicant has failed to establish statutory eligibility for a waiver under section 212(h) of the Act. As the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

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.