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U.S. Citizenship
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FILE:

Office: LOS ANGELES, CALIFORNIA

Date:

MAY 15 2009

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the
Immigration and Nationality Act (INA), 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 Field Office Director, Los Angeles, California. The matter 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 Colombia 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 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 with his wife and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated November 3, 2007.

On appeal, counsel contends that the cumulative effects that would result from the denial of the applicant's waiver application constitute extreme hardship.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. [REDACTED] indicating they were married on February 23, 1990; a copy of [REDACTED] naturalization certificate; copies of birth certificates for the couple's two U.S. citizen children; copies of tax documents; conviction documents; a letter from the applicant's employer; two letters from the applicant's physician stating that the applicant's "HIV is being maintained"¹; an affidavit and a letter from the applicant; and an approved Immigrant Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this 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.

¹ The applicant's Form I-693 Medical Examination of Aliens Seeking Adjustment of Status, submitted in 2002 in conjunction with his application for adjustment of status did not indicate that he was HIV positive. Human Immunodeficiency Virus (HIV) has been determined by the Public Health Service to be a communicable disease of public health significance. 42 C.F.R. § 34.2(b)(4). As such, the applicant is also inadmissible under Section 212(a)(1)(A)(i) of the Act. However, as he has not submitted an application for a waiver of that ground of inadmissibility it will not be addressed in this decision.

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.)

In the instant case, the record shows that the applicant entered the United States in December 1983 without inspection. The record further indicates that the applicant has been arrested and convicted several times, as follows:

1. On April 22, 1985, the applicant was arrested and subsequently convicted of possession of stolen property. He was sentenced to one year probation.
2. On March 30, 1991, the applicant was arrested and subsequently convicted of petty theft. He was sentenced to twenty days in jail.
3. On October 25, 1994, the applicant was convicted of driving without a license and placed on two years probation.
4. On December 28, 1998, the applicant was charged with willful infliction of corporal injury on spouse. He was subsequently convicted and sentenced to thirty days in county jail.

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. However, the AAO notes that the applicant's most recent conviction for the willful infliction of corporal injury on spouse in violation of California Penal Code § 273.5 is not a divisible statute. Moreover, the Ninth Circuit Court of Appeals, where the instant case arises, has held that a violation of the statute necessarily inheres moral turpitude. *See Grageda v. U.S. INS*, 12 F.3d 919, 922 (9th Cir. 1993) ("Because spousal abuse is an act of baseness or depravity contrary to accepted moral standards, and willfulness is one of its elements, we hold that spousal abuse under section 273.5(a) is a crime of moral turpitude."). Therefore, the record shows, and counsel does not contest, that the applicant is inadmissible under section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), for having committed a crime involving moral turpitude.

A section 212(h) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse, parent, son, or daughter of the applicant. 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-Morales*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999), provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under the Act. These factors include: 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.

In this case, there is insufficient evidence that the applicant's wife or children would suffer extreme hardship as a result of the applicant's waiver application being denied.

The applicant states that his wife, two children, parents, and three siblings are all U.S. citizens or lawful permanent residents. He claims that "[t]hese aforementioned prospects are extremely depressing and would cause grave economic and emotional hardship to [him]self, [his] spouse and [his] two United States citizens children."² *Affidavit from* [REDACTED] dated May 27, 2005; *Letter from* [REDACTED] dated October 17, 2005.

Significantly, aside from the applicant's brief affidavit and letter, there are no other statements, letters, or affidavits in the record. There is no statement from [REDACTED] or either of the couple's children who are fifteen and eighteen years old. There is no mention of the possibility of moving to Colombia with the applicant to avoid the hardship of separation, and no discussion addressing whether such a move would represent a hardship to [REDACTED] or the couple's children. The AAO recognizes [REDACTED] and the couple's children will experience hardship as a result of the applicant's waiver application being denied and is sympathetic to the family's circumstances. However, their situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (uprooting of family and separation from friends does not necessarily

² The AAO notes that the applicant has made no claim of hardship to his U.S. citizen father or lawful permanent resident mother.

amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported).

Although the applicant contends his wife and children would suffer grave economic hardship if he left the United States, aside from tax documents, there are no other financial documents in the record. There is no documentation regarding the family's expenses, such as mortgage or rent, and no indication regarding their assets. The most recent tax documents in the record show that in 2004, the applicant earned \$15,857 and [REDACTED] earned \$18,472.³ Although the AAO recognizes [REDACTED] and the couple's children will suffer some economic hardship, without more detailed information, the AAO is not in the position to conclude that the denial of the applicant's waiver application would cause extreme financial hardship. As the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. See also *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).

To the extent counsel makes the general statement that "[t]he cumulative effect of economic detr[i]ment, break up of family ties in the United States, length of residence in the United States since 1983, . . . [and] medical problems . . ." should be considered in the extreme hardship determination, *Rider to Notice of Appeal or Motion (Form I-290B)* (citations omitted), it is unclear who or what medical problems may exist. The applicant makes no mention of any medical problems in either his affidavit or his letter. Although the record indicates the applicant has HIV, according to the applicant's physician, "his HIV is being maintained and [the applicant] is doing well." *Letters from [REDACTED]* dated June 12, 2006, and May 16, 2005. There is no assertion whatsoever from counsel, the applicant, or any qualifying relative that the applicant's HIV status is a factor that should be considered in the extreme hardship determination.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife or children 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) 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.

³ The record also shows wages of \$4,500; however, it is unclear whether this income was earned by the applicant or his wife.