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U.S. Citizenship  
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H<sub>2</sub>

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES, CA

Date: **OCT 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 APPLICANT:

[REDACTED]

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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The District Director, Los Angeles, California, denied the waiver application. On June 5, 2006, the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion to reopen or reconsider. The motion will be granted. The previous decision shall be affirmed. The application will be denied.

The applicant, [REDACTED], is a native and citizen of Honduras 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 committing a crime involving moral turpitude. The applicant is the spouse of a lawful permanent resident and the parent of a citizen of the United States and a lawful permanent resident of the United States. She seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The District Director concluded that the applicant failed to establish extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Excludability (Form I-601). *Decision of the District Director*, dated December 15, 2004. Counsel for the applicant submitted an appeal, which the AAO dismissed finding the record failed to establish extreme hardship to the applicant's husband or daughter (her qualifying relatives) if the waiver application were denied.

On motion, counsel notes that the AAO had found extreme hardship to [REDACTED] husband and daughter if they were to join her to live in Honduras. *Motion to Reopen and Reconsider Decision, dated June 5, 2006*, p. 3. Counsel asserts that because [REDACTED] will take her family with her to Honduras she does not have to show hardship to her husband or child as a result of their remaining in the United States without her. *Id.* Citing *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), counsel states that hardships need to be considered in light of deportation, not in light of parental choice. Counsel states that the AAO cannot claim that [REDACTED] taking her daughter to live in Honduras is due to parental choice. *Id.* at 4. Counsel maintains that the AAO did not address two issues raised on appeal: the director's holding [REDACTED] to a standard of exceptional and extremely unusual hardship and hardship to [REDACTED] U.S. citizen child.<sup>1</sup> *Id.* Counsel states that the AAO failed to properly consider and weigh the psychological evaluation, *id.* at 5, and failed to cite to all of the case law demonstrating that family separation can constitute extreme hardship. *Id.* Counsel states that the AAO failed to provide a fair review of the evidence. *Id.* at 7.

The AAO grants counsel's motion.

The applicant seeks a waiver of inadmissibility. A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The applicant's qualifying relatives are her lawful permanent resident husband and her U.S. citizen daughter.

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<sup>1</sup> The AAO notes that the director did use the phrase "exceptional and extremely unusual hardship" in her decision of December 15, 2004. The AAO agrees that this standard is in error, however, the AAO has de novo review in these proceedings and has reviewed all submissions under the proper "extreme hardship" standard.

Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant’s “qualifying relative.” *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

On motion, counsel asserts that because [REDACTED] will take her family with her to Honduras she does not have to show hardship to her husband or child as a result of their remaining in the United States. The AAO does not find this persuasive. There is no law requiring a qualifying relative to relocate with applicant abroad. Therefore, it would be a choice to have the family join her in Honduras rather than remain in the United States, and extreme hardship must be shown whether the qualifying relatives join the applicant or remain in the United States.

On appeal, the AAO concluded that the applicant had established extreme hardship to her husband and daughter if they were to join her to live in Honduras, but failed to establish extreme hardship to her husband or daughter if he or she were to remain in the United States without the applicant. The AAO will therefore address on motion whether or not the applicant has established extreme hardship to her husband or daughter if he or she were to remain in the United States without her.

The affidavits by the applicant and her husband convey that they have a close relationship with each other and with [REDACTED] their young daughter.

The record contains a psychological evaluation by [REDACTED] dated August 6, 2001, of the applicant’s husband and [REDACTED]. This evaluation addresses the childhood history and current family life of [REDACTED], and the educational history and current functioning of [REDACTED]. The evaluation also provides an assessment of [REDACTED] and [REDACTED] based on psychological tests, the clinical interview, and [REDACTED] observations. The evaluation indicates that the applicant and her husband and daughter have a close family relationship. [REDACTED] stated to [REDACTED] that she

prepares her daughter for school and drives her there and is worried that her husband will be unable to both work and take care of their daughter.

On motion, counsel states that [REDACTED] conclusions are not based on observations over a period of time, but are based on objective testing and should be given weight. As noted on appeal, conclusions reached in the evaluation, being based on a single interview, do not reflect the insight and elaboration derived from an established relationship with a mental health professional, which thereby renders the mental health professional's findings speculative and diminishes the evaluation's value in determining hardship. In her evaluation, [REDACTED] states that [REDACTED] will seek medical explanations for his disorder. However, no evidence was presented on appeal in 2004 or on motion in 2006, of [REDACTED] seeking medical attention for any disorder. Aside from [REDACTED] 2001 evaluation, there is no documentation in the record showing [REDACTED] daughter as having major depression. In determining hardship, the AAO has given proper consideration and weight to [REDACTED] [REDACTED] evaluation of [REDACTED] and his daughter, but finds that the lack of documentation beyond the 2001 evaluation diminishes the weight of the findings.

The AAO acknowledges that family separation must be considered in determining hardship. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) ("the most important single hardship factor may be the separation of the alien from family living in the United States").

However, courts have found that family separation does not conclusively establish extreme hardship. In *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), states that "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991).

[REDACTED] is very concerned about separation from his wife and he indicates that his daughter will be devastated if separated from the applicant. The AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of separation from a loved one. The record before the AAO, however, fails to establish that the situation of [REDACTED] or his daughter, if he or she remains in the United States without the applicant, rises to the level of extreme hardship. The record is insufficient to show that the emotional hardship to be endured by the applicant's husband or daughter is unusual or beyond that which is normally to be expected from an applicant's bar to admission. *See Hassan and Perez, supra*.

[REDACTED] does not claim that he or his daughter will experience any financial hardship if they were to remain in the United States without the applicant.

In considering the submitted evidence cumulatively, the record fails to establish that [REDACTED] or his

daughter would experience extreme hardship if he or she were to remain in the United States without the applicant.

Based on the record, the factors presented do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 212(h) of the Act, 8 U.S.C. § 1182(h).

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed. The waiver application is denied.