

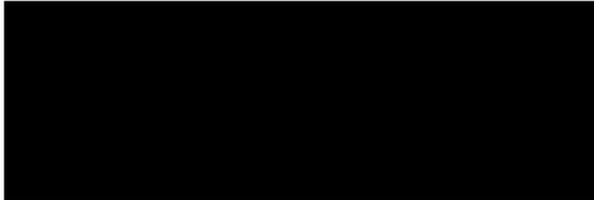
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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Services

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FILE: [REDACTED] Office: LOS ANGELES, CA

Date: OCT 19 2010

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District 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 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 crimes involving moral turpitude. The applicant's spouse, son and daughter are U.S. citizens. He seeks a waiver of inadmissibility under section 212(h) of the Act.

The district director found that based on the evidence in the record, the applicant had failed to establish exceptional and extremely unusual hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *District Director's Decision*, at 3, dated May 11, 2005.

On appeal, counsel asserts that the heightened hardship requirement is in direct conflict with section 212(h)(1)(B) of the Act, the crimes committed by the applicant should not be viewed as "violent or dangerous crimes" under 8 C.F.R. § 212.7(d), and if the heightened hardship standard is applied, it has been met. *Brief in Support of Appeal*, at 7, dated July 7, 2005. Counsel details the hardship that the applicant's qualifying relatives would experience if the applicant is required to leave the United States. *Id.* at 5-7.

The record includes, but is not limited to, counsel's brief; a psychological evaluation of the applicant's family, his spouse and his son; the applicant's son's statement; the applicant's daughter's statements; employer letters and earnings statements for the applicant and his spouse; a mortgage statement and documentation of the applicant's health insurance coverage. The AAO issued a request for evidence on June 2, 2010 asking for updated evidence of hardship to the applicant's qualifying relatives as approximately five years had passed since the filing of the waiver application. The AAO received a psychological assessment of the applicant's spouse, marriage records and the applicant's spouse's naturalization certificate in response to this request. The entire record was reviewed and considered in arriving at a decision on the appeal.

Counsel has also requested oral argument. The regulation at 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. United States Citizenship and Immigration Services (USCIS) has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, the necessity for oral argument has not been shown. Consequently, the request is denied.

The record reflects that the applicant was convicted on November 23, 1993 and July 16, 1998 under California Penal Code (CPC) § 273.5(a) of Willful Infliction of Corporal Injury on a spouse or any person with whom the perpetrator is cohabiting or who is the mother or father of the perpetrator's child. Violation of CPC § 273.5(a) has been found to be a crime involving moral turpitude.

Grageda v. U.S.I.N.S., 12 F.3d 919, 922 (9th Cir. 1993). As such, the applicant is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act.

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, that:

(h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if

....

(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.

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), (B), . . . 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

A waiver of inadmissibility under section 212(h) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse, parent, son or daughter of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse, son

and daughter are the qualifying relatives in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996)

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of deportation, removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of

current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “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.” *Id.*

We observe that the actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their

parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of relocation to Mexico. The applicant’s family was evaluated in 2004 by a psychotherapist who states that the applicant’s son does not read or write Spanish; he will have serious academic problems if he returns to Mexico; he has developed a healthy relationship with the applicant’s spouse and would not like to be separated from her or his sister; he had a serious accident that injured his spinal cord, he had three surgeries and it is important that he continue working with his primary physician and surgeon to attain his health-related goals; he may be forced to work in a non-skilled job; the minimum salary of a worker in Mexico is 500 pesos per week and a family cannot live in a worthy way due to expenses; he will not have a good support system and his psychological and emotional development will be significantly affected; and he will struggle to adjust to the family’s economic constraints, a different educational system and living standard with reduced health care services. The psychotherapist also states that completion of high school in Sinaloa, Mexico is the exception and not the norm and that the applicant’s son will probably not finish school in order to help with the family income; the applicant’s son will have a tremendous opportunity for learning in the United States, is part of the culture and is acquiring cultural values and attitudes that will help him achieve his particular goals in life; and upon returning to the United States, his English skills, education and employment will be limited. *Psychological Evaluation*, at 3-5, dated October 17, 2004. Counsel states that the applicant’s son plans to go to college, will not be able to pursue his dreams if he goes to Mexico, and has lived his entire life in the United States. *Brief in Support of Appeal*, at 6, dated July 7, 2005. The psychotherapist states that the applicant’s daughter lives with her mother. *Psychological Evaluation*, at 2.

While the AAO acknowledges these claims, we note that nearly six years have passed since the evaluation was conducted and the applicant’s children are now adults. No updated hardship evidence in regard to them was provided in response to the AAO’s request for evidence and we are, therefore, unable to find that they would experience extreme hardship upon relocation. The record includes a recent psychological assessment for the applicant’s spouse, but it does not address the hardship that she would experience upon residing in Mexico. Accordingly, the record lacks

sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that a qualifying relative would suffer extreme hardship upon relocation to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative resides in the United States. Counsel states that the applicant and his spouse have been married since 2001, and have a strong and healthy relationship; the applicant works full-time and cares for his son with the support of his spouse; the applicant's son does not have any communication with his biological mother; the applicant keeps in touch with his daughter and makes every effort to see her as often as possible and his inability to remain in this country would sever the bond he has worked so hard to maintain with his daughter; the applicant's spouse relies on the applicant for emotional and financial support, they contribute their earnings to a joint bank account, they were able to buy a house and car together, she would lose everything she has worked so hard to purchase without the applicant, she would be unable to pay for the house and car solely from her income and any default on making payments would be detrimental to her credit; the applicant's spouse and children rely on the health insurance provided by the applicant's employer; the applicant's spouse only has one week of vacation per year and would rarely, if ever, be able to visit the applicant; and the applicant's spouse has a strong emotional bond with the applicant, this is the kind of bond that she thought she would never experience, she was previously married and remained single for ten years before meeting the applicant. *Brief in Support of Appeal*, at 6-7.

The applicant's spouse states that separation from the applicant would cause her emotional, moral and economic suffering; she is completely happy with the applicant, she lived an unhappy life for years and did not believe in love; she and the applicant have established a household full of love and hope; they have purchased a home and new car; living alone is horrible; and she could not financially support herself. *Applicant's Spouse's Statement*, at 1-2, undated.

The applicant's son states that the applicant is a great father and friend, his mother abused him, the applicant and his uncle would stop his mother from beating him, he felt he was having a nightmare when he heard about the applicant's immigration status, his mother kicked him out of the house when he was 12 years old, he broke down in tears when he heard that the applicant might be deported, and the applicant is his best friend and the only true friend he has had in his life. *Applicant's Son's Statement*, at 1-4, undated. The applicant's daughter states that she will feel emotionally depressed and angry if the applicant is deported, the applicant never treated her or her brother badly, the applicant always wanted the best for the family, she does not live with the applicant but she feels spiritually attached to him, and she would not want to live in the United States with only one parent. *Applicant's Daughter's Statement*, at 1-2, undated.

The applicant's family was evaluated in 2004 by a psychotherapist who states that the idea of separation causes the applicant's spouse to feel extremely anxious and depressed and they have never been separated; the applicant's spouse is showing symptoms of anxiety and depression due to her preoccupation with the applicant's immigration status, and these symptoms may impair her social and emotional functioning; the applicant's son had a serious accident that injured his spinal cord, he has had three surgeries, it is important that he continue working with his primary physician

and surgeon to attain his health-related goals and his medical insurance is through the applicant's policy. *Psychological Evaluation*, at 5-6.

While the AAO acknowledges the hardship claims relating to the applicant's children, we note that nearly five years have passed since the applicant appealed the District Director's decision and that no updated evidence of hardship to the applicant's now adult children was provided in response to the AAO's request for evidence. We also observe that the applicant did not document his son's medical problems at the time of his appeal.

The record includes a recent psychological assessment in which the psychologist states that the applicant's spouse has a history of suicidal ideation and domestic abuse from a prior marriage; she denies any suicidal ideation; she has significant depressive symptoms that mimic her first depressive episode at the age of 26; she is experiencing social isolation, hopelessness, increased appetite with weight gain, irritability and a sense of impending doom and tremendous difficulty being alone; she reports symptoms such as insomnia, low energy and crying episodes; she is extremely dependent on the applicant for her emotional stability; it would be extremely detrimental to her overall health and well-being to be separated from the applicant; and she would be at risk for an increase in symptoms including suicidal ideation if she experienced an additional stressor such as separation from the applicant. *Psychological Assessment*, at 2-6, dated July 7, 2010.

The record reflects that at the time the appeal was filed, the applicant worked 40 hours or more per week at \$8.60 per hour. *Applicant's Employer Letter*, dated April 29, 2004. The record also reflects that the applicant's spouse earned \$300 per week. *Applicant's Spouse's Employer Letter*, dated April 28, 2003. It further establishes that the applicant's spouse and children were dependents on his health plan. *Applicant's Spouse's Health Plan Coverage*, undated. The record includes a mortgage statement for the applicant and his spouse showing a monthly payment of \$1,056.08 and tax documents from 2001-2003 that indicate the applicant's spouse would have experienced some financial hardship without the applicant at that time. However, no evidence of current financial hardship was submitted in response to the AAO's request for evidence and we, therefore, find the record to be unclear as to the applicant's spouse's present financial situation.

Based on the record, the AAO finds that the applicant's spouse, but not his children, would experience extreme hardship upon remaining in the United States without him.

A review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, the AAO does not find it necessary to consider whether the record establishes that he is eligible for a favorable exercise of discretion under heightened hardship standard set forth in the regulation at 8 C.F.R. § 212.7(d).¹

¹ The applicant's conviction for Willful Infliction of Corporal Injury on a spouse or any person with whom the perpetrator is cohabiting or who is the mother or father of the perpetrator's child is a violent or dangerous crime. *See Matter of Perez Ramirez*, 25 I & N Dec. 203 (BIA 2010). The regulation at 8 C.F.R. § 212.7(d) states in pertinent part:

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.

The Attorney General [Secretary, Department of Homeland Security], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

In that the applicant has failed to establish extreme hardship to a qualifying relative as a result of his inadmissibility, he has also failed to demonstrate that a qualifying relative would experience the higher standard of exceptional and extremely unusual hardship. The AAO finds counsel's various arguments in regard to the regulation at 8 C.F.R. § 212.7(d) to lack merit.