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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

H6

[redacted]

APR 28 2010

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), and Section 212(h) of the Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 waiver application was denied by the Officer in Charge, Mexico City. 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 section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year, and section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i), for having been convicted of a crime involving moral turpitude. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and 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 officer in charge found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. *Decision of the Officer in Charge*, dated June 15, 2007.

The record contains, *inter alia*: two letters from the applicant's wife, [redacted] letters of support, including a letter from [redacted] father; a Certificate of Participation in a drug/alcohol treatment program; a psychological report for the applicant; a mortgage statement and letter from a debt collector regarding the couple's house in Idaho; a bill from [redacted] physician; and a copy of an approved Petition for Alien Fiance (Form I-129F). 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.

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

> (h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraph[] (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> . . . .
>
> (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 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(a)(9)(B) of the Act provides, in pertinent part:

> Any alien (other than an alien lawfully admitted for permanent residence) who -
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> . . . .
>
> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
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> . . . .
>
> (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In this case, the record shows, and the applicant does not contest, the following facts. In September 1988, the applicant was arrested in San Ysidro, California, and placed in deportation proceedings. He was granted voluntary departure and removed to Guatemala on September 18, 1988. The applicant entered the United States without inspection sometime in 1989. In December 2000, the applicant was convicted in Idaho of felony injury to a child and sentenced to between three and five years of imprisonment. On October 2, 2003, the applicant was removed from the United States.

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until his departure from the United States in October 2003. The applicant accrued unlawful presence of over six years. He now seeks admission within ten years of his 2003 departure. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for being unlawfully present in the United States for a period of more than one year.

The applicant is also inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude. The applicant's wife states that she "truly can't see under the circumstances how [the applicant's] actions could be considered a 'crime of moral turpitude,'" *Letter #1 from* [redacted] undated.

The term "crime involving moral turpitude" is not defined in the Act or the regulations, but has been part of the immigration laws since 1891. *Jordan v. De George*, 341 U.S. 223, 229 (1951). The Board of Immigration Appeals (BIA) has explained that moral turpitude "refers generally to conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general." *Matter of Franklin*, 20 I&N Dec 867,868 (BIA 1994). When determining whether a crime involves moral turpitude, the statute under which the conviction occurred controls. *Matter of L-V-C-*, 22 I&N Dec. 594, 603 (BIA 1999); *Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989). A crime involving moral turpitude must involve both reprehensible conduct and some degree of guilty knowledge or scienter, be it specific intent, deliberateness, willfulness or recklessness. *Matter of Silva-Trevino*, 24 I&N Dec. 687, 689 n.1, 706 (A.G. 2008).

In this case, the applicant was convicted of felony injury to a child, an offense under Idaho law which requires the willful injury or endangerment to a child "under circumstances or conditions likely to produce great bodily harm or death." Idaho Code § 18-1501(1) (2000). As the statute requires willful, reprehensible conduct contrary to the accepted rules of morality, the applicant was convicted of a crime involving moral turpitude. Although the applicant's wife asserts that her husband was convicted based on the testimony of a "vindictive teenager," we cannot look behind the applicant's conviction to reassess his guilt or innocence. *See Matter of Rodriguez-Carrillo*, 22 I&N Dec. 1031 (BIA 1999); *Matter of Fortis*, 14 I&N Dec. 576 (BIA 1974). Therefore, the applicant is also inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude.

To be admitted to the United States, the applicant requires a waiver of inadmissibility under both sections 212(a)(9)(B)(v) and 212(h) of the Act. A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). A waiver of inadmissibility under section 212(h) of the Act is also dependent on a demonstration of extreme hardship to a qualifying relative, which includes the lawfully resident or U.S. citizen sons or daughters of the applicant. Section 212(h) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). 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).

*Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), provides a list of factors the BIA 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.

It is not evident from the record that the applicant's spouse or children would suffer extreme hardship as a result of the applicant's waiver being denied.

In her undated letter submitted on appeal, [redacted] states that it was "never [their] intent to do anything in contrary to the law." She states that she and the applicant filed a Form I-130 before April 1, 1997, but that they had to reapply in 1998 and by then, they already had two small children.[1] [redacted] contends that the applicant was the primary caregiver and it was not an option for them to be separated at that time. In addition, [redacted] explains that when her husband was convicted they had been having marital problems due to the applicant's alcoholism and arrests for driving under the influence. According to [redacted] the applicant has "suffered enough" by spending three years in prison "based on the testimony of one troubled and vindictive teenager." [redacted] further states that the applicant attended Alcoholics Anonymous and has been sober for seven years. She contends that he was paroled because he was "a model inmate," and that after he was deported to Guatemala, they moved to Mexico together. *Letter #1 from* [redacted] undated.

Furthermore, [redacted] states she has been suffering from rectal fistula since 2002. She states she had four surgeries in 2002 and 2003, all of which were unsuccessful. According to [redacted], "[her] surgeon recommended a surgery called a fistulectomy which requires a lengthy recovery. . . . [Her] surgeon states that [she] will likely continue to have problems until [she has] the fistulectomy and that [she] may have an ending result in complete rectal incontinence if left untreated." In addition, [redacted] contends she also has "polycystic ovarian syndrome which causes hormone disruptions and side effects such as fatigue, weight gain, insulin resistance and high risk for Diabetes and other future health problems." She claims she has neuropathy in her feet, suffers from phlebitis, and has poor circulation in her legs.

[redacted] also contends that her son, [redacted], was diagnosed with Cyclic Neutropenia in 2000, which is characterized by the body's inability to produce sufficient white blood cells. She states he was sick for more than three years with routine fevers of 104 to 107 degrees, resulting in several hospitalizations. Moreover, [redacted] states that it has been a financial hardship since the applicant was deported and the family moved to Mexico because she had to buy a home in Texas to enable her children to attend school in the United States. [redacted] states she had to pull her children out of school in Mexico because they cannot speak Spanish and it caused them significant distress. She states the house in Texas is "right smack dab in the middle" of significant drug trafficking and other crime, and that she and her daughter were robbed a few weeks ago. She also

[1] Although [redacted] states that she and the applicant have two children, [redacted] and [redacted] the record contains no birth certificates or other evidence of the children's parentage.

states that her children have missed school whenever she travels for work or a family emergency and that they have missed an unacceptable number of school days, but that they have no other options. She contends she is still responsible for the family's house in Idaho, which "has been difficult to sell and has reached the point of pending foreclosure several times." *Letter from* [redacted] dated April 4, 2006.

Letters from [redacted] mother and [redacted] business partner state that she has been suffering economic and personal hardship because she crosses the border from Mexico into the United States every day to go to work while the applicant home schools the children. *Letter from* [redacted] dated July 10, 2007; *Letter from* [redacted] undated. In addition, several letters in the record state that the applicant preaches to inmates in a jail and a rehabilitation center in Mexico. *See, e.g., Letter from* [redacted] dated July 10, 2007.

After a careful review of the evidence, it is not evident from the record that the applicant's wife or children have suffered or will suffer extreme hardship as a result of the applicant's waiver being denied.

The AAO recognizes that [redacted] and her children have endured hardship since the applicant departed the United States and is sympathetic to the family's circumstances. However, [redacted] does not specifically address how remaining in Mexico with her husband causes her and the children extreme hardship. To the extent she contends she is suffering extreme financial hardship because she had to buy a house in Texas so her children could attend school in the United States, *Letter from* [redacted] dated April 4, 2006, more recent letters in the record indicate the applicant is currently home schooling the children. *Letters from* [redacted] and [redacted] *supra.* There is no documentation in the record, such as a mortgage statement or deed, substantiating [redacted] claim that she bought a house in Texas. There is also no evidence addressing either the applicant's or his wife's wages or documenting their regular, monthly expenses. In addition, [redacted] does not contend she cannot find employment in Mexico. Even assuming some financial hardship, the mere showing of economic harm to qualifying family members is insufficient to warrant a finding of extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981); *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 [redacted] contends that she herself as well as her son have medical problems, aside from one bill for medical services provided to [redacted] in 2003, there is no medical documentation in the record to substantiate these claims. There is, for example, no letter in plain language from any health care professional addressing the diagnosis, prognosis, treatment, or severity of either [redacted] or her son's purported medical problems. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of a medical condition or the treatment and assistance needed.

If [redacted] decides to return to the United States without her husband, their situation is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. Federal courts and the BIA 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 amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse, son or daughter 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, 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.