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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: MAY 28 2004

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.

Robert P. Wiemann, Director
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 Nicaragua who was found to be inadmissible to the United States under 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 is the spouse of a United States citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his U.S. citizen wife and children.

The district director concluded that the applicant established that extreme hardship would be imposed on a qualifying relative, but found that the applicant had not been rehabilitated and demonstrated a reckless disregard for the laws of the State of California and the United States. The district director denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *See* Decision of the District Director, dated November 18, 2003.

On appeal, counsel states that a brief will be submitted. *See* Form I-290B, dated December 10, 2003. The AAO notes that over five months have elapsed since the filing of the appeal and a brief has not been received. A decision will therefore be rendered based on the record as it currently stands.

The record contains a letter from the applicant's spouse, dated October 29, 2003; a copy of the license and certificate of marriage for the applicant and his spouse; copies of the social security cards issued to the applicant and his family; an attachment to the Form I-601 signed by the applicant; copies of court documents relating to the criminal history of the applicant; copies of the certified abstracts of birth for the son of the applicant and his spouse and the daughter of the applicant's spouse.

The record reflects that on October 27, 1992, the applicant was convicted of Grand Theft of a Motor Vehicle, a violation of section 487(H) of the California Penal Code, and was sentenced to 180 days imprisonment. On March 31, 1994, the applicant was convicted of Receiving Stolen Property, a violation of section 496(A) of the California Penal Code, and sentenced to one year of imprisonment.

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 . . . 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 -
>
> > (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –

(i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
(iii) the alien has been rehabilitated; or

(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 decision of the district director outlines and highlights portions of section 212(h)(1)(A) of the Act in denying the applicant's waiver of inadmissibility. The AAO notes that section 212(h)(1)(A) of the Act does not apply to the applicant as the activities for which the applicant was found inadmissible did not occur more than 15 years before the date of the applicant's application for adjustment of status. Therefore, to the extent that the decision of the district director rests on determinations made pursuant to section 212(h)(1)(A) of the Act, the decision is erroneous and is withdrawn.

A section 212(h)(1)(B) waiver of the bar to admission is applicable to the instant application. A section 212(h)(1)(B) waiver resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) of the Act. 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 that the decision of the district director states that the applicant has met the standard of extreme hardship, however the decision does not state a basis for this finding by the district director. Therefore, the AAO undertakes *de novo* review on appeal.

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 pursuant to section 212(i) of 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.

The record contains a letter from the applicant's spouse stating that if the applicant is removed from the United States, she will be forced to abandon her education and engage in employment. *See* Letter from Lucila Avila Montoya, dated October 29, 2003. The record does not evidence the type or extent of education in

which the applicant's spouse is engaged. The record does not establish the employment prospects of the applicant's wife and generally does not provide a basis for the AAO to assess the financial hardship imposed on the applicant's spouse by the inadmissibility of the applicant. The proffered letter from the applicant's spouse makes further assertions of hardship that are unsubstantiated by the record. *Id.*

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, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's wife and children will endure hardship as a result of separation from the applicant. However, their situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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(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.