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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass. 3/F.
425 Eye Street N.W.
Washington, D.C. 20536



FILE [REDACTED]

Office: SAN ANTONIO, TEXAS

Date: DEC 18 2003

IN RE: Applicant: [REDACTED]

APPLICATION: Applications for Waiver of Grounds of Inadmissibility under section 212(h) and for Permission to Reapply for Admission after Removal under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h) and 8 U.S.C. § 1182(a)(9)(A)(ii).

ON BEHALF OF APPLICANT: [REDACTED]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application and the application for permission to reapply for admission after removal were denied by the District Director, San Antonio, Texas, and are now before the Administrative Appeals Office (AAO) on appeal. The appeals will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(2)(B) of the Act, 8 U.S.C. § 1182(a)(2)(B), for having been convicted of multiple criminal offenses, for which the aggregate sentences to confinement were five years or more. In addition the record reflects that on June 7, 1982 the applicant was removed from the United States pursuant to an order of deportation and he was present in the United States without a lawful admission or parole in July 1982, without permission to reapply for admission in violation of § 276 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1326 (a felony). On December 15, 1997 he filed Form I-485, Application to Register Permanent Residence or to Adjust Status, based on an I-130, Petition for Alien Relative, filed by his spouse. His application was denied on November 4, 1999. On June 19, 2000 his deportation order was reinstated pursuant to section 241(a)(5) of the Act and the applicant was removed to Mexico. The applicant is inadmissible under § 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h) and permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. 1182(a)(9)(A)(iii) in order to travel to the United States to reside with his spouse and children.

The district director denied the Application for Waiver of Grounds of Excludability (Form I-601) as a matter of discretion. In addition the district director determined that the applicant had not provided proof of more than five successive years absence from the United States and permission to reapply for admission after deportation would serve no purpose since he would remain inadmissible to the United States. The application for Permission to Reapply for Admission After Removal (Form I-212) was denied accordingly. See *District Director's Decisions* dated January 29, 2003.

On appeal, counsel asserts that the district director erred in the I-212 waiver request reasoning that the waiver would serve no purpose since his I-601 waiver application was denied. Counsel asserts that the district director abused his discretion in denying the I-601 waiver because he did not look into the hardship to the qualifying family members and in addition denied the waiver application because the applicant did not have an application for adjustment of status pending.



The AAO finds that the District Director erred in his decision to deny the I-601 partially because the applicant did not have an adjustment application pending. The record reveals that an I-601 was filed with the Immigration and Naturalization Service (now, Citizenship and Immigration Services (CIS)), on July 8, 1999 prior to the denial of the I-485 application. The I-601 waiver application was properly filed and the extreme hardship to the qualifying family members should be considered. In addition there is nothing in the law or regulations that requires a pending application in order to apply for a waiver of inadmissibility.

A review of the record reveals that the applicant has an extensive criminal record in the United States. The aggregate sentences to confinement for his multiple criminal convictions were five years or more making him inadmissible to the United States under Section 212(a)(2)(B) of the Act.

Section 212(a)(2)(B) of the Act provides that:

(2) Criminal and related grounds. -

. . . .

(B) Multiple criminal convictions.-Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

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

(h) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana 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

In the present case, the applicant must demonstrate extreme hardship to his U.S. citizen spouse or children to qualify for a 212(h) waiver.

Section 212(h) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(B) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

On appeal, counsel asserts that CIS abused its discretion in denying the applicant's I-601 waiver application. Counsel states that the district director denied the I-601 application without weighing the favorable factors against the unfavorable factor of the case. Before the AAO can look into the favorable and unfavorable factors in this case it must first determine if the qualifying family members would suffer extreme hardship if the applicant's waiver application was not approved.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deemed 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.

In his brief counsel states that the applicant's spouse (Ms. Campos-Martinez) and children would suffer emotional and financial hardship if the applicant was not granted a waiver of inadmissibility. The brief states general hardship that would be imposed on Ms. [REDACTED] and her children if her spouse was to leave the country. Ms. [REDACTED] will be forced to be a single mother without the emotional and financial support provided by her spouse. The record contains no other claims or evidence of hardship. Moreover, the brief contains no detailed information or corroborative evidence to establish emotional or financial hardship to the

applicant's wife and children.

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 (9th Cir. 1991). 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. *Hassan v. INS*, *supra*, held further that the 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. The U.S. Supreme Court additionally 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.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his qualifying family members would suffer extreme hardship if he was not permitted to enter the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

Matter of Martinez-Torres, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

Since the applicant's appeal for a waiver of inadmissibility under section 212(a)(2)(B) of the Act will be dismissed no purpose would be served in adjudicating his application for permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(h) and 212(a)(A)(iii) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeals will be dismissed.

ORDER: The appeals are dismissed.