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U.S. Department of Justice
Immigration and Naturalization Service

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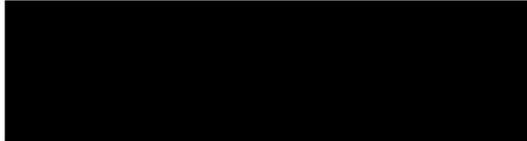
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D. C. 20536



File: [Redacted] Office: ST PAUL, MINNESOTA

Date: FEB 12 2003

IN RE: Applicant:



Application: Application for Waiver of Grounds of Inadmissibility under
Section 212(i) of the Immigration and Nationality Act, 8
U.S.C. 1182(i)

IN BEHALF OF APPLICANT:



PUBLIC COPY

INSTRUCTIONS:

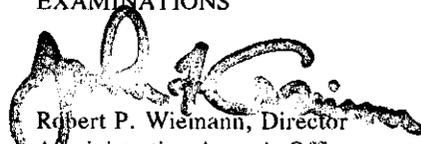
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 the Service 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, St. Paul, Minnesota, and is now before the Associate Commissioner for Examinations on appeal. The appeal 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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(C)(i), for having sought to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized citizen of the United States and is the beneficiary of an approved petition for alien relative. He seeks the above waiver in order to remain in the United States and reside with his spouse and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, counsel states that the district director cited the applicant's arrest record as an adverse factor but failed to consider that the applicant's last offense took place in 1996 and that he is clearly rehabilitated and poses no risk to society. Counsel also asserts that the district director failed to give any weight to the applicant's twelve-year marriage and the substantial hardships his spouse will suffer if he is removed from the United States due to the birth of the couple's twin sons one year ago. Counsel explains that the couple suffered from years of fertility problems and that the miracle of their children's birth following these problems was negated by the district director's decision which failed to make any reference to their existence. Counsel concludes that the applicant's case meets virtually all of the hardship factors enumerated in case law given the couple's long-term marriage, the birth of their children, country conditions in Mexico, the couple's economic situation, and related factors, and that the district director committed reversible error by failing to give them proper consideration.

The applicant alleges to have lived and worked in the United States without lawful status since in or about 1977 and to have been arrested by Service officers in 1983 and 1986. The record reflects that on January 19, 1993, he sought to procure admission into the United States by claiming to be a United States citizen and by presenting a United States birth certificate in another person's name. He was processed for prosecution, a sworn statement was taken, and his vehicle was seized. The record contains a copy of a complaint filed against the applicant in the U.S. District Court, Southern District of Texas, dated January 19, 1993, charging him with a violation of section 275 of the Act, 8 U.S.C. 1325, and containing a cryptic notation of "90 days, S/3 years." The record is devoid of a judicial decision regarding the complaint. Since he

was returned to Mexico the same day, it appears that he was granted a voluntary return without being prosecuted. In a previous decision, the Associate Commissioner determined that the applicant does not require an application for permission to reapply for admission into the United States after deportation or removal.

The record also reflects that the applicant has been charged with a variety of offenses on several occasions between 1983 and 1996, including the following:

On November 17, 1983 for Driving Under the Influence (DUI), for which he was sentenced to twelve months incarceration, \$1,000.00 fine, and two years probation. His release from probation is noted as unsatisfactory.

On November 26, 1983 for DUI, for which he received 72 hours in jail and a \$100 fine.

On July 11, 1984 for DUI (disposition unknown).

On August 30, 1985 for PI/Disturbance for which he was fined \$64.00.

On November 21, 1987 for DUI (disposition unknown).

On May 9, 1988 for PI (disposition unknown).

On May 13, 1988 for Robbery by Assault, Fictitious Name (no charges filed), and for traffic violations for which he was fined.

On May 20, 1988 for DWLA/SR (disposition unknown).

On July 14, 1988 for Aggravated Assault with a Deadly Weapon (no charges filed).

On May 2, 1989 for No Insurance, for which he was fined \$186.00, and for No Motor Vehicle Inspection, for which he was fined \$161.00.

On May 3, 1989 for Failure to Appear, for which he was fined \$61.00.

On May 4, 1989 for No Insurance/No Driver's License, for which he was fined \$186.00 for both charges.

On July 12, 1996 for Gross Driving While Under the Influence with a Child Under 16 Years of Age, for which he was fined \$3000.00/\$2,100.00 suspended, and received a stayed sentence, probation for five years, and ordered to attend a DUI clinic.

Although the above charges against the applicant are numerous and many are serious, the record does not contain sufficient evidence to find him inadmissible to the United States under section 212(a)(2)(A)(i)(I), 8 U.S.C. 1182(a)(2)(A)(i)(I) for having been convicted of a crime involving moral turpitude. Therefore, only his inadmissibility under section 212(a)(6)(C)(i) will be addressed.

Section 212(a) of the Act states:

CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-
Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

* * *

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-

* * *

(C) MISREPRESENTATION.-

(i) IN GENERAL.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act states:

ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT.-

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Sections 212(a)(6)(C) and 212(i) of the Act were amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub L. 104-208, 110 Stat. 3009. There is no longer any alternative provision for waiver of a section 212(a)(6)(C)(i) violation due to passage of time. In the absence of explicit statutory direction, an applicant's eligibility is determined under the statute in effect at the time his or her application is finally considered. See Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999).

If an amendment makes the statute more restrictive after the application is filed, the eligibility is determined under the terms of the amendment. Conversely, if the amendment makes the statute more generous, the application must be considered by more generous terms. Matter of George and Lopez-Alvarez, 11 I&N Dec. 419 (BIA 1965); Matter of Leveque, 12 I&N Dec. 633 (BIA 1968).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Although extreme hardship is a requirement for section 212(i) relief, once established, it is but one favorable discretionary factor to be considered. See Matter of Mendez, 21 I&N Dec. 296 (BIA 1996).

In Matter of Cervantes-Gonzalez, *supra*, the Board of Immigration Appeals (BIA) stipulated that the factors deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act include, but are not limited to, the following: 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 finally, 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 reflects that the applicant and his spouse, also a native of Mexico who naturalized as a citizen of the United States in 1999, were married in 1990. The couple has twin sons born in the United States in June 2001. The applicant has been employed as an assistant manager at Master Mark Plastics in Albany, Minnesota since 1998. His annual salary is not noted in the record. His spouse has been employed at Gold'n Pump in St. Cloud, Minnesota since 1994 and earns approximately \$16,000 annually. The applicant also has three brothers who are lawful permanent residents of the United States.

The record includes a statement from the applicant's spouse that she would be devastated if the applicant were removed from the United States. She expresses great fear at the prospect of remaining in the United States without the applicant, but indicates that she cannot return to Mexico due to the economic conditions in that country and her need to provide financial assistance to her parents. The record also contains letters of support on behalf of the applicant from his neighbors, friends, landlord, and employer indicating that he is a good neighbor, valued employee, and honest, hard-working family man.

In Perez v. INS, 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation.

The 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.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his spouse would suffer extreme hardship over and above the normal disruptions involved in the removal of a family member. 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 of waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.