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Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
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Washington, D.C. 20536

A12



File: [Redacted] Office: SAN FRANCISCO, CA

Date: JAN 31 2003

IN RE: Applicant: [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)

IN BEHALF OF APPLICANT:



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, San Francisco, California, 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)(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 and father of United States citizens and is the beneficiary of an approved petition for alien relative. He seeks a waiver of this permanent bar to admission as provided under section 212(h) of the Act, 8 U.S.C. 1182(h) in order to remain in the United States and adjust his status to that of a lawful permanent resident.

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 asserts that the district director erroneously determined that the applicant's spouse would not suffer extreme hardship if he is removed from the United States. Counsel also asserts that the district director did not fully consider all of the factors presented, nor their cumulative impact, and that the applicant deserves a waiver in the favorable exercise of discretion.

The record reflects that the applicant has a history of legal violations dating from 1990. He has been convicted of the following offenses: Theft of a Vehicle in 1990, Trespass in 1992, Burglary in 1993, and Battery in 1995.

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 ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

* * *

(2) CRIMINAL AND RELATED GROUNDS.-

(A) CONVICTION OF CERTAIN CRIMES.-

(i) IN GENERAL.- Except as provided in clause (ii), an alien convicted of, or who admits having committed, or who admits committing such 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 states:

The Attorney General may, in his discretion, waive application of subparagraphs (A) (i) (I), ...if-

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General 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 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; and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or for adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7

years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

Here, fewer than fifteen years have elapsed since the applicant was convicted of a crime involving moral turpitude. Therefore, he is ineligible for the waiver provided by section 212(h)(1)(A) of the Act.

Section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission resulting from inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The key term in the provision is "extreme." Therefore, only in cases of great actual or prospective injury to the qualifying relative(s) will the bar be removed. Common results of the bar, such as separation or financial difficulties, in themselves, are insufficient to warrant approval of an application unless combined with much more extreme impacts. Matter of Ngai, 19 I&N Dec. 245 (Comm. 1984). "Extreme hardship" to an alien himself cannot be considered in determining eligibility for a section 212(h) waiver of inadmissibility. Matter of Shaughnessy, 12 I&N Dec. 810 (BIA 1968).

The record reflects that the applicant and his spouse were married in July 1995. They have two children born in the United States, a daughter in 1994 and a son in 1997. The applicant also has a daughter from a prior relationship born in the United States in 1992. The applicant is a self-employed landscaper and his spouse is unemployed. The most recent income tax records contained in the record indicate that the applicant earned an adjusted gross income of \$6,980.00 in 1996. The affidavit of support on behalf of the applicant contained in the record was filed by his spouse's father.

In support of the initial waiver application, the applicant's spouse submitted an undated letter stating that she would suffer emotional and financial hardship if the applicant were removed from the United States. Specifically, she claimed that she would not be able to make her rental payments, pay for day care for the children, or repay loans to family and friends for a new business venture.

On appeal, counsel submits documentation including a brief; a declaration from the applicant's spouse dated March 28, 2002; birth certificates for the couple's son and the applicant's daughter from a prior relationship; a school letter concerning the couple's daughter; immunization summaries for the couple's two children; a physician's note concerning the couple's son; and a letter indicating that the applicant's spouse is an active member of the National Marrow Donor Program.

The physician's note submitted on appeal indicates that the couple's son has been followed since birth in connection with a cardiac murmur due to pulmonic stenosis. The applicant's spouse states that it is not a serious problem but that she is worried that it could become a significant threat to his health in the future. In her declaration, the applicant's spouse also indicates that she had exploratory surgery in June 2001 and that she knows that she will ultimately need a hysterectomy, but is not emotionally ready to take that step. She states that she relies on the applicant when her pain becomes too great to bear and will need his assistance to take care of the family during her recovery. The information submitted also indicates that the applicant's spouse has voluntarily donated stem cells on two occasions and requires a partner in the home who can help her with her family and household duties during and after donation. It is noted that there is no medical evidence contained in the record to establish that any of the applicant's qualifying relatives has a significant condition of health for which treatment would be unavailable in Mexico.

On appeal, counsel states that the applicant recently sold his business and is in the process of purchasing a store. Because their children are young, the spouse's primary responsibility is to take care of the family's domestic concerns. Counsel states that she will help the applicant in the new store but could not run it by herself if the applicant were removed.

The applicant's spouse states that she and the couple's children would not relocate to Mexico with the applicant if he were removed, due to the poverty in that country and her and her son's health concerns. Also, she does not want to sacrifice their children's future and rights as citizens to obtain a good education and employment. Counsel states that if the applicant is removed to Mexico, his family in the United States will lose their sole source of income and the applicant could not contribute financially from any salary he would earn in Mexico.

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. Further, the common results of deportation are insufficient to prove extreme hardship. See Hassan v. INS, 927 F.2d 465 (9th Cir. 1991). 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. See Shooshtary v. INS, 39 F.3d 1049 (9th Cir. 1994). In Silverman v. Rogers, 437 F.2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States."

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, fails to establish the existence of hardship over and above the normal social and economic disruptions involved in the removal of a family member that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to remain in the United States. It is concluded that the applicant has not established the qualifying degree of hardship in this matter.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Attorney General and pursuant to such terms, conditions, and procedures as he may by regulations prescribe. Since the applicant has failed to establish the existence of extreme hardship, no purpose would be served in discussing a favorable exercise of discretion at this time.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. Matter of Ngai, supra. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

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