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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE: [REDACTED]

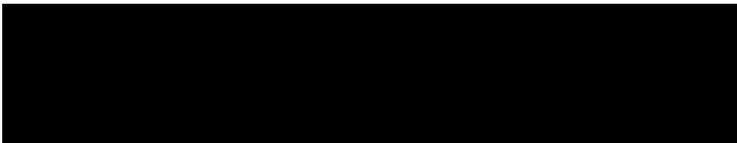
Office: LOS ANGELES

Date: FEB 22 2005

IN RE: [REDACTED]

PETITION: 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 PETITIONER:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, and is now before the Administrative Appeals Office (AAO), on appeal. The appeal will be dismissed.

The applicant is a native and citizen 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 crimes involving moral turpitude. The applicant is the son of a United States citizen and of a lawful permanent resident and the parent of two United States citizen children. He 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 family.

The district director, in originally considering the requested waiver, concluded that she was denying the application as a matter of discretion. In addition, the district director's decision appeared to take issue with the nature of the evidence submitted on the applicant's behalf, specifically the spouse's letter. The district director appears to have discounted the statement noting that the spouse was riding with the applicant on the waiver application and was not, herself, a United States citizen. The director denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated October 8, 2003. Counsel then filed the instant appeal.

On appeal, counsel contends that the district director erred in denying the waiver application and asserts that the applicant's spouse was justified in submitting the letter based upon her belief that she was a lawful permanent resident.¹ In addition, counsel submits additional information on appeal, including affidavits from the applicant's parents, and letters from the skilled nursing facility providing care for the applicant's father. The AAO notes that the record contains several documents submitted in support of the application, including the additional documents offered in support of the appeal. The entire record was considered in rendering a decision on the current appeal.

The record reflects that the applicant is a forty-six-year-old native and citizen of Mexico. He claims to have last entered the United States without inspection at San Ysidro, California on or about February 1993. While living in the United States during the early 1990's, the applicant was convicted of several criminal offenses. Those offenses included two separate convictions for theft, one on July 13, 1993, and the second one on March 8, 1992.² The applicant married his spouse, [REDACTED] on July 31, 1990. The couple has two children born in the United States; a son born December 11, 1990, and a daughter born on February 17, 1993. The applicant's parents reside in the United States, and the record reflects that the applicant's father is a United States citizen, and his mother is a lawful permanent resident. The applicant filed an Application for Adjustment of Status (Form I-485) on July 20, 1996, based upon his brother's status as a United States citizen. Additional processing of the I-485 occurred, and the applicant's counsel filed the Form I-601 waiver application on April 11, 2001. The application was ultimately denied on October 8, 2003, for the reasons previously stated.

Section 212(a)(2)(A) of the Act states in pertinent part:

¹ Although not entirely clear from the AAO's review of the record, including the applicant's spouse's file, it appears that the spouse was granted adjustment of status on August 16, 2000. However, the status was rescinded on November 13, 2003, following the issuance of a Notice of Intent to Rescind sent on or about October 9, 2003.

² The record also reflects that the applicant was convicted in 1991 of the offense of possessing and inhaling of toluene.

- (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 –

...

(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 applicant was convicted of the crimes specified above. Counsel does not contest the fact that the applicant has been convicted of crimes involving moral turpitude and requires a waiver of inadmissibility in order to pursue adjustment of status.

Upon review of the record, the AAO finds that the district director considered the applicant's eligibility for a waiver under section 212(h)(1)(B) of the Act concluding that the application would be denied in the exercise of discretion. A review of the record indicates that the director did not consider the application in terms of whether the applicant had made a showing of extreme hardship to a qualifying relative. Rather, the applicant's eligibility was only considered as a matter of discretion. The AAO agrees with counsel that the district director failed to consider the evidence in the record regarding the hardship on the qualifying family members, having taken issue with the form in which such evidence was presented, namely its inclusion in the letter from the applicant's spouse, a non-qualifying relative for purposes of the waiver. In addition, the record reflects that counsel has submitted additional evidence on appeal with respect to hardship to the applicant's parents, in part, to counteract the director's finding that the evidence in the form of the spouse's statement was improper. The AAO will consider the applicant's eligibility for a waiver of inadmissibility under section 212(h)(1)(B) pursuant to our *de novo* authority. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

A waiver of the bar to admission to the United States is dependent upon the alien's showing that the bar imposes an extreme hardship on a qualifying family member. Congress provided this waiver but limited its application. By this limitation, it is evident that Congress did not intend that a waiver be granted merely due to the fact that a qualifying relationship exists. The key term in the provision is "extreme." Therefore, only in cases of great actual or prospective injury to the United States citizen or permanent resident will the bar be removed. Common results of the bar, such as separation, financial difficulties, and such, in themselves are insufficient to warrant approval of an application unless combined with more extreme impacts. *See Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien had established extreme hardship. The factors included 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 *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), the BIA held that "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

The primary evidence in the record supporting the applicant's request for a waiver consists of: 1) the statement submitted by the wife addressing the hardship she and the couple's U.S. citizen children would experience if the applicant's waiver application were denied; 2) statements from the applicant's parents describing the hardship they would experience if the applicant's waiver were denied; 3) letters from officials from Country Villa, Bay Vista Healthcare Center describing the condition of the applicant's father and the care being provided to him. The remaining documents consist of family documents evidencing the applicant's birth, his marriage, and the birth of his two U.S. citizen children.

Counsel asserts that the evidence offered supports the claim that the applicant's children and parents will experience extreme hardship. The evidence in support of hardship to the applicant's children consists solely of the letter submitted by the applicant's spouse on April 2, 2001. The AAO notes that although the director's decision indicated that the applicant's spouse was ineligible to submit the letter, the letter, in addition to being signed by the applicant's spouse, is also signed by the applicant's children. However, even if the letter were only signed by the applicant's spouse, the AAO would still consider the contents of the letter as appropriate evidence of hardship to the applicant's children given that the children are minors. Their mother is in a position to offer an assessment of the hardship they would experience. However, accepting the letter is not the same thing as finding that it establishes extreme hardship. The letter essentially states that the children would experience extreme hardship if the waiver were not granted because the father plays an important part in the children's lives. The letter recounts the various activities in which the children are involved in school and states that the applicant always finds time to be involved in his children's lives. It further states that the applicant is a hard worker and a good financial provider for his family. Finally, the letter predicts that the children would suffer emotional hardship and lose the stability and happiness in their lives if separated from their father. See *Letter from Miriam, and Jorge Grajeda*, dated April 2, 2001.

While the AAO has no reason to question any of the assertions contained in the letter, those assertions are insufficient to demonstrate extreme hardship. There are no unique circumstances set forth which would indicate that the hardship that the applicant's children would be considered extreme. The assertions as to any financial hardship are general in nature and conclusory. Only limited financial documentation was submitted with the I-485. Furthermore, additional sources of income and support for the family may exist, such as any employment held by the applicant's spouse, and the financial support being offered by the applicant's brother who submitted an Affidavit of Support (Form I-134) pledging to support the applicant and his spouse.

The AAO has also reviewed the evidence of hardship to the applicant's parents. The evidence reflects that the applicant's mother and father are seventy-nine, and eighty years old respectively. Counsel has provided declarations from each parent as additional evidence on appeal. Considered together, those declarations state that the applicant's father is in very poor health, having suffered a stroke, which left him incapacitated and receiving rehabilitative services in a nursing home. The mother is likewise elderly and asserted to be in relatively poor health. According to the applicant's father's statement, she "suffers from severe leg pains and can hardly walk. *See Statement of Jesus Grajeda*, dated December 19, 2003. The mother's statement, however, does not indicate that she suffers from any medical condition, though it does reiterate the medical problems of the applicant's father. *See Statement of Guadalupe Grajeda*, dated December 19, 2003. In addition, counsel has submitted two letters from the nursing facility at which the applicant's father has been receiving care. The first letter, from the facility administrator, indicates that the applicant's father entered the facility in November 2003, after being transferred from a medical center. The letter states that he suffered from a "subdural hematoma" which required surgery and required skilled nursing services. *See Letter from Jeanie Barrett, Administrator* dated December 2, 2003. The second letter, from the Director of Nursing Services, indicates that the applicant's father is a resident of the facility who is receiving rehabilitation services. It further states that he is unable to communicate verbally and requires the assistance of his family in regard to financial affairs. *See Letter from Mary Grace Molina, Director of Nursing Services*, dated December 17, 2003.

While the situation of the applicant's father is unfortunate, it is not clear that the evidence in the record supports a finding of extreme hardship. First, the AAO notes that the evidence is ambiguous as to the long-term implications of the father's condition. This may be due to the recent nature of the illness at the time that the statements in support of the appeal were submitted. The AAO notes that while counsel has supplied letters from the nursing facility caring for the applicant's father, no evidence from a doctor treating the applicant's father has been submitted discussing his condition or prognosis. While he is experiencing a serious medical condition that is undoubtedly causing hardship for his wife and for himself, the link between that hardship and the grant of a waiver to the applicant has not been established. If the applicant's father remains in the nursing facility, it is unclear to what extent, if any, the applicant's parents are financially dependent upon the applicant for financial assistance. While the letter from the nursing director states that the father requires assistance with his financial affairs, it does not indicate that the parents are financially dependent upon the applicant himself. While the father's statement indicates that the applicant's financial situation allows him to provide for his family and his parents, it does not establish that the applicant's parents are dependent upon him for their basic needs. Furthermore, while the applicant appears to provide emotional support and companionship to his parents, the AAO notes that the evidence in the record also reflects that the applicant has an extended family in the United States, including eleven siblings almost all of whom, according to the applicant's father's statement, have legal status in the United States. *See Statement of Jesus Grajeda*, dated December 19, 2003. While it appears that the applicant, due to the fact that he lived in the same apartment complex, provided significant assistance to his parents, it appears that the presence of an extended family network in the United States will help to ease the hardship that the applicant's parents will experience.

U.S. court decisions have repeatedly held, however, 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