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FILE:



Office: DENVER, CO

Date: JUL 20 2005

IN RE:



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:

SELF-REPRESENTED

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 Interim District Director, Denver, Colorado and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to 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 (two convictions for third degree assault and one conviction of child abuse: knowingly causes injury). The AAO notes that it considers the child abuse conviction a crime involving moral turpitude, however, the record is not clear enough to determine whether the third degree assault convictions are crimes involving moral turpitude. The record indicates that the applicant has a U.S. citizen spouse and three U.S. citizen daughters. The applicant seeks a waiver of inadmissibility in order to reside with his family in the United States.

The interim district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen family members and the application was denied accordingly. *Interim District Director Decision*, dated August 28, 2003.

On appeal, the applicant's spouse references the financial hardship that the family would face if the applicant's waiver is denied. *Letter in Support of Appeal*, dated January 9, 2004.

The record contains previously submitted documents including letters from the applicant's spouse, his children and a school teacher. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

(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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

(h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-

....

(1)(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 AAO notes that section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of lawful permanent resident or United States citizen family ties to 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.

Therefore, an analysis under this case is appropriate in regard to the qualifying relatives. The record does not indicate the presence of lawful permanent resident or United States citizen family ties to the United States, if applicable, for the qualifying relatives. The record does not mention any family ties, if applicable, outside of the United States for the qualifying relatives. There is no evidence of the country conditions in Mexico and how that would affect the qualifying relatives.

The applicant's spouse states that the applicant has a good job, they have a home and she stays home with the children. *Supra.* at 1-2. The applicant's spouse questions where her family would live and how would they eat if they were to relocate to Mexico. *Letter from Applicant's Spouse*, dated December 8, 2002. One of the daughter's teachers states that the applicant provides for his family. *Letter from School Teacher*, undated. However, no financial documentation has been provided to substantiate the assertions of the applicant's spouse or the daughter's school teacher.

There is no mention of health conditions for the qualifying relatives nor of the unavailability of suitable medical care in Mexico. Therefore, when reviewing the record in its entirety, extreme hardship has not been shown in the event that any of the qualifying relatives relocate to Mexico or in the event that any of them remain in the United States.

U.S. court decisions have additionally 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, *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. Moreover, 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 U.S. citizen spouse or any of his daughters would suffer hardship that is unusual or beyond that which would normally be expected upon removal. 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.

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. 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.