

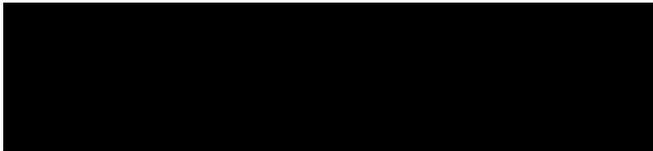
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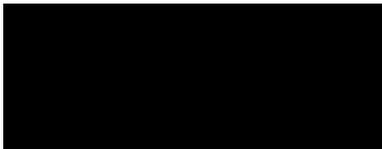
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FILE:  Office: SAN FRANCISCO (SAN JOSE), CA Date: SEP 29 2005

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:



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 District Director, San Francisco (San Jose), California. The matter 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 a crime involving moral turpitude (unlawful sexual intercourse with a person under 18). The record indicates that the applicant has a U.S. citizen child and two lawful permanent resident parents. The applicant seeks a waiver of inadmissibility in order to reside with his family in the United States.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse or children and the application was denied accordingly. *District Director's Decision*, dated December 15, 2003.

On appeal, counsel asserts that the district director erred in the application of section 212(h) of the Act and that the applicant has established that his parents and daughter would suffer extreme hardship if he were removed to Mexico. *See Form I-290B*, dated January 9, 2004.

The record contains counsel's brief, affidavits from the applicant and his family members, school records for the applicant's child and the applicant's immigration documents. 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.

Counsel contends that the district director relied upon cases which have different fact patterns than the instant case. *Brief in Support of Appeal*, at 4, dated January 10, 2004. The AAO notes that the district director cited several cases to establish relevant extreme hardship law and then applied the applicant's fact pattern to the law.

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. An analysis under the factors mentioned *Matter of Cervantes-Gonzalez* is appropriate for the case at hand.

In regard to the applicant's daughter, counsel asserts that the district director did not consider her hardship. *Brief in Support of Appeal*, at 3. The AAO agrees that there was not a detailed factual analysis by the district director, however, it also notes that the applicant did not submit a substantial amount of evidence with the application. The applicant's daughter's immediate family is in the United States. The record does not indicate that she has any ties to Mexico.

In regard to the financial impact of departure, counsel asserts that the applicant pays \$300 per month for her support and provides her with medical insurance, but this would be lost if he were removed to Mexico. *Id.* at 3. In regard to country conditions in Mexico, counsel asserts that there are no doctors in Izucar de Matamoros, Mexico and the applicant's daughter would be forsaking her education. *Id.* The applicant states that children in Mexico suffer more from diseases and children born in the United States are more susceptible to illness in Mexico. See *Applicant's Affidavit*, at 1, dated November 13, 2003. The AAO notes that there is no corroborating evidence of country conditions in the record. Lastly, there is no mention of any significant conditions of health other than the applicant's statements of potential illness. Counsel cites *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001), a case where extreme hardship was found to a fifteen year old girl through uprooting her and requiring her to survive in a Chinese-only environment. In the case at hand, there is no indication that the applicant's daughter cannot speak Spanish or documentation other than affidavits that she would face extreme hardship in Mexico. Furthermore, the record indicates that the applicant's daughter does not reside with the applicant and could continue to reside with her mother in the United States.

In regard to the applicant's father, his immediate family is in the United States. The record does not indicate if he has any ties to Mexico. Counsel asserts that the applicant's father barely makes enough to cover the rent, he has a sick son, his wife is not working and he needs the applicant's help to meet his basic expenses. *Id.* The record does contain evidence of the financial impact of departure other than affidavits from the applicant and his father. There is no mention of any significant conditions of health for the applicant's father.

In regard to the applicant's mother, her immediate family is in the United States. The record does not indicate if she has any ties to Mexico. Counsel asserts that the applicant's mother takes care of her sick child and needs the applicant's financial help. *Id.* The record does contain evidence of the financial impact of departure other than affidavits from the applicant and his mother. There is no mention of any significant conditions of health for the applicant's mother.

The AAO recognizes there are difficulties in relocating to Mexico, particularly for the applicant's child. However, the record does not reflect extreme hardship to any of the qualifying relatives in the event of relocation to Mexico. Furthermore, counsel does not establish extreme hardship in the event that the applicant's qualifying relatives 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 any of the qualifying relatives 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 an additional discussion of 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.