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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

[REDACTED]

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FILE:

[REDACTED]

Office: LOS ANGELES, CA

Date: SEP 30 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:

[REDACTED]

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, Los Angeles, California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen/reconsider. The motion will be granted, the appeal will be sustained and the previous decisions of the district director and the AAO will be withdrawn.

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 unmarried son of a lawful permanent resident of the United States and the parent of two United States citizen children. The applicant 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 father 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 for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 19, 2003. The decision of the district director was affirmed on appeal by the AAO. *See Decision of the AAO*, dated June 7, 2004.

On motion to reopen/reconsider, counsel asserts that the applicant is presenting new and clarifying facts to support his assertion of extreme hardship. *Motion to Reopen/Reconsider Denial of Appeal of Denial of 212(h) Waiver*, dated July 2, 2004.

In support of these assertions, counsel submits a declaration of the applicant's father, dated June 30, 2004; a declaration of the applicant's girlfriend, the mother of one of the applicant's children, dated June 30, 2004; a declaration of the mother of the applicant's other child, dated June 30, 2004; a letter regarding the employment of the applicant, dated June 25, 2004; a letter from a physician treating the applicant's father, dated June 28, 2004 and copies of tax and financial documents for the applicant. The record also contains copies of documents relating to the criminal history of the applicant; copies of the birth certificates of the applicant's children; a declaration of the applicant's girlfriend, undated; a letter verifying the employment of the applicant; copies of tax documents for the applicant and evidence of homeownership by the applicant; a sworn declaration of the applicant's father, dated March 15, 1997 and a letter of extreme hardship from the applicant, dated March 15, 1997. The entire record was considered in rendering a decision on the appeal.

The record reflects that on February 14, 1992, the applicant was convicted of Receiving Stolen Property and was sentenced to 12 months probation. On March 15, 1997, the applicant was convicted of Assault with a Deadly Weapon and sentenced to 180 days in county jail with three years probation.

8 C.F.R. § 103.5(a)(2) (2002) states in pertinent part:

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

8 C.F.R. § 103.5(a)(3) (2002) states in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect

application of law or Service [now Citizenship and Immigration Services (CIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

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

- (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.
- (ii) Exception – Clause (i)(I) shall not apply to an alien who committed only one crime if –
  - (I) the crime was committed when the alien was under 18 years of age, and the crime was committed . . . more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States . . .

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 -
  - . . . .
  - (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 . . .

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) of the Act. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include 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.

Counsel contends that the applicant's father, a lawful permanent resident and two children, both of whom are United States citizens, would suffer extreme hardship if the applicant returned to Mexico. The applicant's father states that he depends on the applicant for emotional and financial support in coping with several medical conditions that he suffers. *Declaration of David Salas*, dated June 30, 2004. The statement of the applicant's father indicates that the applicant assists in paying for his father's medical care and accompanies his father to medical appointments and surgeries. *Id.* The applicant's father indicates that if the applicant departs the United States, he will be unable to have the knee surgery that he currently requires. *Id.* See also *Letter from Miguel I. Figueroa, M.D.*, dated June 28, 2004. The record reflects that the applicant's father suffers from diabetes, osteoarthritis, blindness and severe arthritis of the knees. *Letter from Miguel I. Figueroa, M.D.* The record establishes that the applicant is the only person able to provide care and financial support to his father.

Counsel submits a statement from the girlfriend of the applicant to support the assertion that the applicant provides financial support to their child. *Declaration of Juanita Velazco*, dated June 30, 2004. The applicant's girlfriend further indicates that the applicant provides support to her other child. *Id.* The applicant's girlfriend contends that she is unable to financially provide for the applicant's child in the absence of the applicant because she lacks training and education and has two children for whom she provides care. *Id.* The record also contains a declaration of the mother of the applicant's other child who asserts that the applicant provides the sole financial support for her child as well. *Declaration of Maria L. Martinez*, dated June 30, 2004. The record on motion to reopen/reconsider establishes that the applicant serves as the sole financial support to his two children, citizens of the United States, and his father, a lawful permanent resident of the United States. The marked decline in income that would likely be suffered by the applicant as a result of relocation to Mexico would certainly inhibit his ability to continue successfully fulfilling this role. Further, it is evident that the relocation of the applicant's children and father to Mexico in order to remain with the applicant would impose extreme hardship on the applicant's aged father and children.

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 Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe.

The favorable factors in this matter are the extreme hardship that is imposed on the applicant's father and two children as a result of the applicant's inadmissibility to the United States, a steady job, and acceptance of responsibility for both his father's and his children's welfare.

The unfavorable factors in this matter are the applicant's convictions for Receiving Stolen Property and Assault with a Deadly Weapon. While the AAO cannot emphasize enough the seriousness with which it regards these flagrant breaches of the laws of the United States, the severity of the applicant's crimes is at least partially diminished by the fact that, according to the record, the applicant has not been convicted of a crime in over 10 years.

It is concluded that the favorable factors in the application outweigh the unfavorable ones. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has now met that burden. Accordingly, the motion to reopen/reconsider will be granted and the appeal will be sustained.

**ORDER:** The motion to reopen/reconsider is granted. The appeal is sustained. The previous decisions of the district director and the AAO are withdrawn, and the application is approved.