



U.S. Citizenship
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FILE:

Office: SANTA ANA, CA

Date: APR 05 2006

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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) 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 of a United States citizen and the son of two lawful permanent residents of the United States. He is the beneficiary of an approved Petition for Alien Relative (Form I-130) and 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 spouse and parents.

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 District Director*, dated August 25, 2004.

On appeal, counsel states that the decision of the district director errs in failing to take into account the extreme hardship that would result to the applicant's parents and failing to consider the equities. *Form I-290B*, dated September 27, 2004. In support of this assertion, counsel submits a brief; a letter from the applicant's spouse, dated September 12, 2004; a letter from a physician treating the applicant's father, dated September 3, 2004 and copies of court documents expunging the applicant's criminal record. The entire record was reviewed and considered in rendering a decision on the applicant's appeal.

The record reflects that, on February 19, 2002, the applicant was convicted in the Superior Court of Los Angeles, California of Grant Theft: Property Over \$400 in connection with an arrest that occurred on September 26, 2000 and Burglary in connection with an arrest that occurred on June 1, 2001.

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.

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.

The AAO acknowledges counsel's submission of court documents evidencing the expungement of the applicant's criminal record. *See Letter from [REDACTED]*, dated November 8, 2005 and attachments. The AAO notes, however that "an alien is considered convicted for immigration purposes upon the initial [finding of a conviction] and that he remains convicted notwithstanding a subsequent state action purporting to erase all evidence of the original determination of guilt through a rehabilitative procedure." *In re Roldan-Santoyo*, 22 I. & N. Dec. 512, 523 (BIA 1999).

On appeal, the applicant's spouse states that she is a student finishing requirements to obtain a bachelor's degree in journalism and that the applicant provides her with financial and emotional support. *Letter from [REDACTED]* dated September 12, 2004. The AAO notes that the record fails to establish the level of progress that the applicant's spouse has made toward earning her bachelor's degree. In the absence of such documentation, the AAO is unable to assess the duration of assistance required by the applicant's spouse. Moreover, the record fails to demonstrate that the applicant's spouse is unable to maintain employment while completing her degree and/or that the applicant's spouse will be unable to support herself financially when she obtains her degree.

The applicant's spouse indicates that the applicant's father was diagnosed with gouty arthritis. *Id.* Counsel submits a letter from a physician in support of this assertion. The submitted letter from a physician treating the applicant's father indicates that his illness is characterized by severe joint pain, swelling, and total joint immobility. The letter states that when the applicant's father experiences these symptoms, he requires assistance for his personal needs. *Letter from [REDACTED]*, dated September 3, 2004. While the medical condition of the applicant's father is regrettable, the record fails to establish that the applicant and/or his spouse are the only people situated to provide assistance to the applicant's father when he experiences episodes of arthritic pain. Notably, the record fails to demonstrate the physical condition of the applicant's mother and/or to establish her facility to provide care to her spouse. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). In the absence of complete

documentation, the AAO is unable to render a finding of extreme hardship imposed on the applicant's father as a result of the inadmissibility of the applicant.

While the record contains general statements from the applicant's spouse indicating that accompanying the applicant to his home country would constitute de facto exile infringing on her rights as a United States citizen and forcing her to "endure the potentially traumatic consequences of resettlement in a foreign nation," the record fails to contain assertions of particularized hardship, including the factors identified in *Matter of Cervantes-Gonzalez*, that would confront the applicant's spouse and/or parents if they relocated to Mexico in order to remain with the applicant. See *Affidavit o* dated February 26, 2003.

U.S. court decisions have repeatedly 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. The AAO recognizes that the applicant's spouse and/or parents would likely endure hardship as a result of separation from the applicant. However, their situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and/or parents caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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. See 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.