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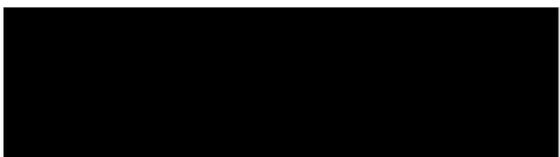
U.S. Department of Homeland Security
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U.S. Citizenship
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FILE:

Office: LOS ANGELES

Date: AUG 16 2006

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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, Chief
Administrative Appeals Office

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

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. The applicant is the spouse of a U.S. citizen, mother of three U.S. citizen children and the daughter of a lawful permanent resident. She seeks a waiver of inadmissibility pursuant to sections 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with her spouse, children and mother.

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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated January 27, 2005.

The record reflects that, on November 21, 1997, the applicant was convicted of reporting a crime fraudulently in violation of section 148.5(A) of the California Penal Code (CPC) and was sentenced to 3 years probation with one day in jail. On February 18, 1999, the applicant was convicted of petty theft in violation of section 666 of the CPC and was sentenced to 24 months of probation with one day in jail. On August 26, 1999, the applicant was convicted of petty theft in violation of section 666 of the COC and was sentenced to 3 years probation and one day in jail. On April 12, 2001, the applicant married her spouse, [REDACTED], who is a U.S. citizen by birth.

On April 30, 2001, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on December 19, 2001. On February 12, 2002, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485), based on the approved Form I-130. On May 29, 2003, the applicant filed the Form I-601 with documentation to support her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, counsel contends that the applicant's family members will suffer extreme hardship if the applicant is denied a waiver. *See Applicant's Brief*, dated March 28, 2005. In support of the appeal, counsel submitted the above-referenced brief, affidavits from the applicant's spouse and mother, medical documentation for the applicant's mother and children, a psychological report for the applicant's spouse and children, a letter in regard to the applicant's spouse's treatment for drug addiction, mortgage documents and financial documents for the applicant and her spouse. The entire record was reviewed in rendering a decision in this case.

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

- (1) Criminal and related grounds. —
 - (A) Conviction of certain crimes. —
 - (i) In general. — Except as provided in clause (ii), any 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:

Waiver of subsection (a)(2)(A)(i)(I) . . .

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I).

. . . 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 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 district director based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's conviction and admission to committing crimes involving moral turpitude. Counsel does not contest the district director's determination of inadmissibility.

Hardship to the alien herself is not a permissible consideration under the statute. A section 212(h) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse, parent, son or daughter of the applicant.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 at 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case

beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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).

The record reflects that the applicant's husband, [REDACTED] is a U.S. citizen by birth. The applicant's mother, [REDACTED] is a native of Mexico who became a lawful permanent resident in 1998 and a naturalized U.S. citizen in 2005. [REDACTED] is a widow who has resided with the applicant since 1997 and has multiple medical conditions. The applicant and [REDACTED] have a seven-year old son, a five-year old son and a one-year old daughter, who are all U.S. citizens by birth. The record reflects further that the applicant and [REDACTED] are in their 30's, [REDACTED] is in her 60's, and [REDACTED] is a recovering drug addict.

Counsel contends that [REDACTED] would suffer extreme hardship whether he remained in the United States without the applicant or traveled to Mexico in order to reside with the applicant. [REDACTED] was steadily employed until he was convicted of drug possession and has had a problem obtaining steady employment ever since. The applicant and [REDACTED] claim no marketable job skills. Documentation in the record establishes that [REDACTED] is a recovering drug addict who is being treated as an outpatient through a 12-step program. [REDACTED] states that, as a recovering drug addict, he is not a reliable parent for his children and they would suffer as a result of the loss of their mother. Medical documentation indicates that the applicant's son suffers from severe constipation for which he receives treatment. Medical documentation in the record indicates that the applicant's mother suffers from diabetes, high cholesterol, arthritis, poor vision and heart problems. The psychological report indicates that [REDACTED] and the children would be severely affected by the applicant's absence. If [REDACTED] the applicant and the children relocated to Mexico to avoid separation, [REDACTED] and the applicant would be unable to obtain sufficient employment to support the family owing to the economy and their lack of marketable job skills. [REDACTED] and [REDACTED] would be unable to obtain sufficient treatment for their conditions and they would lose the medical insurance that they currently have in the United States. If [REDACTED] moves to Mexico and suffers the loss of his family in the United States and observes his and the children's adjustments to a new country, it would put him at risk for increased drug abuse.

The applicant and [REDACTED] prospects, even with [REDACTED] past experience, for adequate employment in Mexico are somewhat dim. If he remained in the United States, [REDACTED] would face trying to combat his own health and psychological problems, which would be exacerbated by the applicant's absence, as well as his unstable employment. If they remained in the United States, the children would face trying to combat the normal psychological problems associated with the loss of a parent which would be exacerbated by Mr. [REDACTED] health, financial and psychological problems. If [REDACTED] remained in the United States, she would face trying to combat her own health problems without the assistance of her primary caregiver, the applicant. It would be extremely difficult for [REDACTED] and the children to mitigate the effects of separation by visiting the applicant, due to impact of the applicant's absence on their financial, medical and psychological problems. Although [REDACTED] is skilled, in Mexico, where wages are generally lower and the unemployment rate is high, these skills would be undermined and he and his family could be reduced to poverty, compounded by his, [REDACTED] and the children's

health and psychological conditions [REDACTED] has no immediate family in Mexico and he has significant family ties in the United States. The economic hardships [REDACTED] and the children face are not uncommon to alien and families upon deportation. However, the hardship [REDACTED] and the children face is substantially greater than that which aliens and families upon deportation would normally face when combined with their history of medical and psychological problems. A finding of extreme psychological, physical and financial hardship is the inevitable conclusion of the combined force of the submitted medical and psychological letters. A discounting of the extreme hardship [REDACTED] and the children would face in either the United States or Mexico if the applicant were refused admission is, therefore, not appropriate. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors, cited above, supports a finding that [REDACTED] and the children face extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case are the applicant's criminal convictions for which she seeks a waiver and her unlawful presence and employment in the United States. The favorable and mitigating factors in the present case are the extreme hardship to the applicant's husband, mother and children if she were refused admission, the significant ailments of husband and mother and the applicant's spouse's and children's significant ties to the United States.

The AAO finds that, although the crimes and immigration violations committed by the applicant cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.