

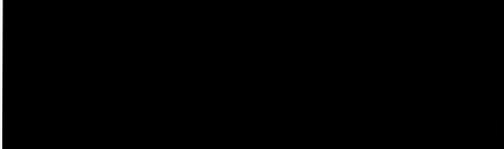
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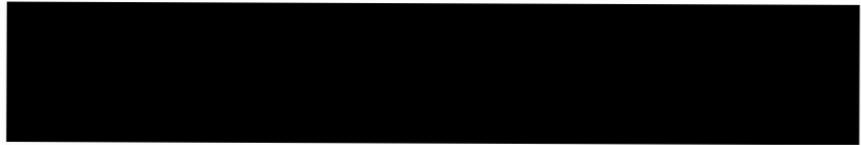
Office: PHOENIX, ARIZONA

Date: JUN 28 2006

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona. 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 entered the United States without inspection in 1990. The applicant is married to a U.S. lawful permanent resident (LPR) and is the beneficiary of an approved petition for alien relative. The applicant was found to be inadmissible to the United States pursuant to § 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 seeks a waiver of inadmissibility in order to reside with her husband and children in the United States.

The district director found that the applicant had failed to establish extreme hardship to her LPR husband and U.S. citizen children. The application was denied accordingly. On appeal, counsel asserts that the district director failed to give due consideration to the impact the applicant's removal would have on her children. Counsel also contends that the district director erred in failing to consider the discretionary factors present. Counsel does not submit any additional evidence on appeal. The AAO has reviewed the entire record and concurs with the district director's decision.

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) states in pertinent part that:

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-

(1)(A) [I]t is established to the satisfaction of the Attorney General that-

(i) [T]he activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(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.

On February 21, 1995 the applicant was convicted of unlawful use of foodstamps in Arizona Superior Court for Maricopa County. The acts for which she was convicted occurred in 1992, which was less than fifteen years prior to this adjudication. The applicant is therefore statutorily ineligible for a waiver pursuant to § 212(h)(1)(A) of the Act. She is, however, eligible to apply for a waiver of inadmissibility pursuant to § 212(h)(B) of the Act.

The AAO notes that a finding of extreme hardship to the applicant's qualifying relatives is a prerequisite to the discretionary analysis of favorable and unfavorable factors present. Given that the district director found that the applicant had failed to establish extreme hardship to her family, it was unnecessary to analyze the discretionary factors in this case.

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 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.

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 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.

The record includes statements by the applicant, her husband, her children, friends, relatives, and her priest. The record also contains documents such as birth certificates, court records, and others. The AAO has reviewed the entire record and finds no evidence to support a conclusion that the applicant's husband and children would suffer to a greater extent than others upon the removal of a family member. Counsel mentions the hardship that the applicant's departure would cause her children, but the record contains no documentation to show that their situation would be worse than that of other children who are separated from their mother or who move abroad to accompany their parent. The record also contains no documentation to establish that the applicant's husband would be more negatively affected than other spouses by either a separation from the applicant or a relocation to Mexico. Although the AAO acknowledges the challenges facing the applicant's

family members, the record establishes that their situation will be comparable to that of similarly situated individuals.

The totality of the documentation in the record does not establish that the applicant's U.S. citizen spouse and children would suffer hardship that was 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 § 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.