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FILE:



Office: LOS ANGELES, CA

Date:

MAR 29 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:

SELF-REPRESENTED

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. The matter 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 entered the United States without inspection in 1989. He is married to a U.S. citizen 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 his U.S. citizen wife and children in the United States.

The district director found that the evidence failed to establish extreme hardship to the applicant's U.S. citizen spouse and children. The application was denied accordingly. On appeal, the applicant asserts that his inadmissibility will cause extreme hardship to his qualifying relatives whether or not they accompany him to Mexico, should he be removed.

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.

The applicant was convicted in California of three crimes: theft of personal property in 1994, hit and run with property damage in 1995, and corporal injury on a spouse or cohabitant in 1999. The crime of theft for which the applicant was convicted pursuant to California Penal Code § 484(a) is considered to be one involving moral turpitude. The hit and run infraction under California Vehicle Code § 20002(a) does not constitute a crime involving moral turpitude, as it does not include any element of intent to do harm. The crime of corporal injury to a spouse/cohabitant is a crime involving moral turpitude. The applicant was convicted of the crimes involving moral turpitude in 1994 and 1999, both of which are less than fifteen years prior to the application for adjustment of status. The applicant is therefore statutorily ineligible for a waiver pursuant to § 212(h)(1)(A) of the Act. He is, however, eligible to apply for a waiver of inadmissibility pursuant to § 212(h)(B) of the Act.

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 held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> 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 (9<sup>th</sup> 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 applicant has been married to his U.S. citizen spouse since 2000. He has two U.S. citizen children aged ten and fourteen from his previous relationship, and at the time of appeal, his wife was pregnant. The AAO presumes the third child was born in 2005. The record reflects that the applicant's spouse is originally from Mexico, and that she became a naturalized U.S. citizen in 2003. According to the applicant's statement, his two older sons visit him every weekend. The record includes court records, statements by the applicant, his wife, and his children, employment letters, tax and other financial records, and other documentation. The applicant asserts that his wife and children would suffer extreme hardship whether they stay in the United States without him or accompany him to Mexico. The applicant also expresses remorse for the act of violence he committed against his former live-in girlfriend in 1999.

The applicant contends that his U.S. citizen qualifying relatives would suffer severe emotional hardship if he were separated from them. He also states that they would suffer financial hardship, as he supports them. His

wife indicates on appeal that in Mexico, she would be faced with adjusting to a different culture, lower standards of health care, and a lower standard of living. The record does not establish, however, that the applicant would be unable to secure employment in Mexico or that the applicant's wife would be unable to cope with the potential financial challenges. The applicant's two older children do not live in his home, and the record does not establish that they would suffer severe emotional or financial harm in his absence. There is also no documentation regarding the psychological effect his absence would have on the applicant's spouse. In sum, 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.