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FILE:

[REDACTED]

Office: PHOENIX, AZ

Date:

MAY 10 2006

IN RE:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Sections 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

[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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Phoenix, AZ. The matter is now before the Administrative Appeals Office (AAO) on certification. The acting district director's decision is affirmed and the application is denied.

The record reflects that the applicant is a native and citizen of Costa Rica who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude (three domestic violence assault convictions). The record indicates that the applicant has a U.S. citizen spouse, U.S. citizen child and U.S. citizen stepchild. The applicant seeks a favorable exercise of discretion in order to reside with his family in the United States.

The acting district director concluded that the applicant is ineligible for a section 212(h) waiver. *Notice of Certification*, at 2, dated January 30, 2006.

In response to the notice of certification, counsel states that applicant clearly merits a waiver based on the declarations of his wife and stepdaughter, the motion to reconsider and the Form I-290B. *Attorney's Brief*, at 5, dated March 4, 2006.

The record includes, but is not limited to, counsel's brief, statements from the applicant's family and documents relating to the applicant's criminal history. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on February 7, 1997, the applicant filed Form I-485, Application to Register Permanent Residence or to Adjust Status, and he was found inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act for his crimes involving moral turpitude. On June 19, 2001, the applicant was sent a Notice of Intent to Deny, thereby giving him an opportunity to file Form I-601, Application for Waiver of Grounds of Excludability. The applicant failed to submit documentation to establish that he was not inadmissible and the Form I-485 was denied on August 13, 2001. On August 24, 2001, the applicant filed Form I-601, but on September 5, 2001, the Form I-601 was denied as there was no underlying I-485. On August 24, 2001, the applicant filed a motion to reopen the Form I-485, but the motion was dismissed on July 1, 2002 as the applicant failed to establish extreme hardship to his spouse or children.

On July 25, 2002, the applicant filed a second Form I-485, without including Form I-601, and the acting district director stated that it did not appear likely that a section 212(h) waiver would have been granted in the applicant's case. Therefore, the Form I-485 was denied on January 6, 2004. On February 6, 2004, the applicant filed an appeal of the decision on the Form I-601 and the acting district director stated that the applicant failed to file the appeal within 30 days. Therefore, the acting district director treated the filing as a motion to reopen and dismissed the motion for failure to establish extreme hardship to his spouse or children, failure to file within 30 days of the Form I-601 denial and failure to establish a motion to reopen or reconsider was based on any new facts or incorrect application of law or service policy. Counsel asserts that the Form I-290B was timely filed, however, the January 6, 2004 decision was on the Form I-485, which cannot be appealed to the AAO. The Form I-601, which can be appealed, was denied on September 5, 2001, thereby making the Form I-290B filing late.

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) of the Act provides, in pertinent part, that:

(h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (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.

The AAO notes that section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

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 lawful permanent resident or United States citizen family ties to 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to one of the qualifying relatives must be established in the event that they relocate to Costa Rica or in the event that they remain in the United States, as they are not required to reside outside of the United States based on denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of relocation to Costa Rica. The record does not include any information in regard to this prong of the analysis, therefore, it has not been met.

The second part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event that they remain in the United States. The applicant's spouse states that she is a partner with the applicant in a janitorial business with 42 employees. *Affidavit of Applicant's Spouse*, at 3, dated February 3, 2004. She states that the applicant is responsible for customer relations and supervision of day-to-day operations and she lacks the experience to handle these duties. If the applicant leaves, his spouse will have to hire a new field manager while assuming the day-to-day operations and her current account duties. *Id.* at 3-4. The applicant's spouse believes the applicant is irreplaceable and his loss will result in the end of the business. *Id.* at 4. She states that without the income of the applicant, she will not be able to pay their home-mortgage and for their daughter's college tuition, books and rent. *Id.* The AAO notes that it is not uncommon for a business to assume new management and continue to be successful. In addition, there is no indication that the applicant's spouse cannot find alternative employment should the business close.

The applicant's stepdaughter states that the applicant has provided her with a part-time job with a flexible work schedule and he provides her with both financial and emotional support. *Affidavit of Applicant's Stepdaughter*, at 2, dated February 3, 2004. She states that she will not be able to continue her current educational program as she will have to work full-time now to make ends meet. *Id.* at 3. The AAO notes that separation entails inherent emotional stress and financial and logistical problems which are common to those involved in the situation. However, the record does not establish extreme hardship to the applicant's spouse or children in the event that they remain in the United States without the applicant.

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 (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 additionally 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.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse or children would suffer hardship that is unusual or beyond that which would normally be expected upon removal in the event that they relocate to Costa Rica or remain in the United States with continued access to U.S. employment.

Having found the applicant statutorily ineligible for relief, no purpose would be served in an additional discussion of whether the applicant merits a waiver as a matter of discretion. Therefore, counsel's assertions that the applicant is rehabilitated will not be addressed.

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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the certification will be affirmed.

ORDER: The acting district director's decision is affirmed and the application is denied.