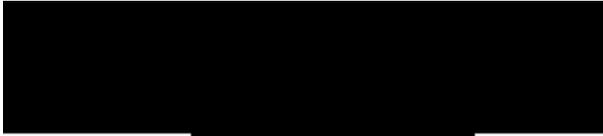


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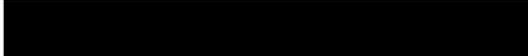


Office: LOS ANGELES

Date:

MAY 19 2006

IN RE:



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

ON BEHALF OF PETITIONER: 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.

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

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 dismissed.

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 daughter of a lawful permanent resident of the United States and mother of two U.S. citizen sons. She seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that she may reside in the United States with her father and sons.

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 the District Director*, dated November 29, 2004.

The record reflects that, on December 10, 1981, immigration officers apprehended the applicant at a checkpoint inside the United States, near the San Ysidro, California, Port of Entry. The applicant presented a U.S. birth certificate belonging to another. The applicant stated that she did not enter the United States by presenting the U.S. birth certificate but entered the United States without inspection. On December 14, 1981, the applicant was convicted of illegal entry and sentenced to time served. The applicant voluntarily returned to Mexico. On November 6, 1995, the applicant was convicted of mayhem in violation of section 203 of the California Penal Code (CPC). The applicant was sentenced to 90 days in jail, 60 days of which were suspended, and 36 months of probation.

On September 21, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on an approved I-130 Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen son. The record shows that the applicant appeared at CIS' Los Angeles District Office on March 28, 2002. The applicant admitted that she had made a false claim to U.S. citizenship by presenting to immigration officers at an internal checkpoint a U.S. birth certificate that belonged to another. The applicant also admitted that she had been convicted of the crime of mayhem.

On September 15, 2004, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On November 9, 2004, the district director issued a notice of denial of the application because the applicant had been convicted of a crime involving moral turpitude and had failed to establish that extreme hardship would be imposed on a qualifying family member.

On appeal, the applicant contends that she should be eligible for a waiver since her criminal conviction occurred more than ten years ago and that the district director erred in finding that the applicant's family members would not experience extreme hardship if the applicant were to be removed to Mexico. *See Form I-290B* dated December 13, 2004; *Applicant's Affidavit*, dated January 24, 2005. In support of the appeal, the applicant submitted the above-referenced affidavit, an affidavit from the son with whom she resides, and copies of documentation in regard to her father's disability. The entire record was reviewed and considered in rendering a decision on the appeal.

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:

- (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) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that —
 - (i) . . . the 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 [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 district director based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's admission to and conviction for mayhem, a crime involving moral turpitude. The applicant contends that she should not be denied the waiver because she submitted proof that the court found her record to be cleared of the conviction and that the conviction was a misdemeanor. *See Form I-290B*, dated December 13, 2004. The AAO finds that the record does not contain any evidence to indicate that the applicant's record has been cleared. The record contains evidence that searches by the local police found no convictions under an incorrect spelling of the applicant's name. When a search by the local police was conducted under the

correct name the record supplied by the county indicated that the applicant's conviction records had been destroyed since it was a misdemeanor that was committed more than 5 years prior to the search and all misdemeanor records are destroyed by the country after five years. This record does not indicate that the applicant's conviction has "been cleared." The applicant's argument that her conviction is only a misdemeanor has no bearing on whether she is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act.

A "conviction" for immigration purposes is defined in section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), as:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

The applicant's criminal record indicates that the applicant was convicted of mayhem and was sentenced to 90 days in jail, 60 days of which were suspended, and 36 months of probation by the judge. As such, the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act.

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 AAO notes that there is no evidence in the record that one of the applicant's son's, [REDACTED], is a U.S. citizen. However, for purposes of this decision, the AAO will assume that both of the applicant's sons are U.S. citizens by birth.

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).

On appeal, the applicant asserts that denial of her waiver would result in extreme hardship to her father, [REDACTED] who is a lawful permanent resident of the United States. The record reflects that the applicant is in her 50's, [REDACTED] is over 65, and [REDACTED] has health concerns. The applicant has a 29-year old son and a 31-year old son who are both U.S. citizens by birth and who have no health concerns.

The applicant asserts that [REDACTED] would suffer hardship if he were to remain in the United States without the applicant because "he was recently disabled from the social security because he was not able to see very well. He was recently operated from his right eye [and] I'm the one that has been taking care of him." The record indicates that the applicant is not employed and resides with her eldest son who claims her as a dependent on his tax returns, indicating that he provides her with financial support. Financial records for the applicant's son indicate that [REDACTED] has never lived with the applicant. The social security notice of award indicates that, as of August 2003, [REDACTED] has been residing at a different address from the applicant with another individual who provides him shelter and pays his expenses. There is no evidence in the record to suggest that [REDACTED] relies upon the applicant for any financial support. The applicant, in her January 2005 affidavit, stated that [REDACTED] recently became disabled. However, the social security notice of award indicates that [REDACTED] has been disabled since July 2003. The applicant indicated that [REDACTED] underwent eye surgery and that she has been taking care of him. However, the medical documentation submitted does not give a diagnosis or prognosis in regard to [REDACTED] eye surgery. There is no evidence in the record to suggest that [REDACTED] suffers from a mental or physical illness that would cause him to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. Additionally, it appears that [REDACTED] has a grandson and another individual, with whom he resides, in the immediate vicinity, who may be able to support him financially and emotionally in the absence of the applicant. The AAO notes that the record does not contain an affidavit from [REDACTED]

The applicant does not contend that her U.S. citizen sons will suffer extreme hardship should she be removed from the United States, noting that "[she is] not asking for the pardon because of my children [she] know[s] that they're grown up and are able to take care by themselves." However, the applicant's son, [REDACTED] in his affidavit, states "[the applicant] dosnt have anyone to turn to, much less in a country now foreign to her in many ways. She has become culturaly assimilited and is the mother of two grown U.S citizens." The applicant's son [REDACTED] in his affidavit, states "[the applicant] raised us by her self sinse a was 4 years . . . and [he] still thank her for making me and my brother good, hard working citizens . . . [his] kid's living with [him] in North Carolina, they don't known her, and the sad part is the she live in California . . . hard for [him] to take them to visit her, but it will be harder if she has to move back to Mexico . . . every time [he] need[s] a good advice, [he] still turn[s] to [the applicant]." There is no evidence in the record to suggest that the applicant's sons suffer from a mental or physical illness that would cause them to suffer emotional hardship beyond that commonly suffered by aliens and families upon deportation. Financial records do not indicate that they receive any assistance from the applicant. While the hardships the applicant's son's face are unfortunate, the hardships faced by them with regard to separation from the applicant and their children's inability to have regular contact with the applicant, are what would normally be expected with any

son whose mother is being deported to a foreign country. The applicant and her two sons do not assert that they would return to Mexico with her. The AAO is, therefore, unable to find that the applicant's sons would experience hardship should they choose to join the applicant in Mexico. Additionally, the AAO notes that, as U.S. citizens, the applicant's sons are not required to reside outside of the United States as a result of denial of the applicant's waiver request.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's father and sons would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] and the applicant's sons will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a daughter or parent is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO finds that the applicant is not eligible to be granted a waiver of her grounds of inadmissibility because she is rehabilitated. Unfortunately, the crime involving moral turpitude for which the applicant was found inadmissible occurred less than 15 years prior to the applicant's application for an immigrant visa or the date of this decision. Therefore, the AAO finds the applicant is statutorily ineligible to apply for a waiver under section 212(h)(1)(A) since she does not meet the requirement that the activities for which she is inadmissible occurred more than 15 years prior to her application for an immigrant visa. The AAO also finds that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for attempting to procure immigration benefits under the Act by fraud or willful misrepresentation of a material fact. While the applicant was not seeking admission into the United States, she did present a U.S. birth certificate to immigration officers, who were U.S. government officials, in order to remain in the United States in 1981. As the applicant has been found ineligible for a waiver under section 212(h) of the Act, she is also ineligible under section 212(i) of the Act which requires a finding of extreme hardship to a U.S. citizen or legal permanent resident spouse or parent.

The AAO therefore finds that the applicant failed to establish extreme hardship to her lawful permanent resident father or U.S. citizen sons as required under section 212(h) of the Act, 8 U.S.C. § 1186(h). Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.