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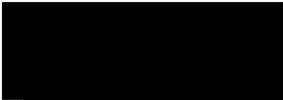
U.S. Citizenship
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FILE:



Office: CHICAGO, IL

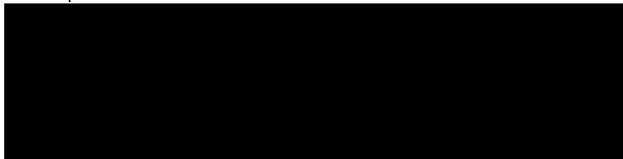
Date: **NOV 20 2006**

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Chicago, IL. 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 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 record indicates that the applicant is married to a U.S. citizen and has one U.S. citizen child. The applicant seeks a waiver of inadmissibility in order to reside with his wife and child in the United States.

The interim district director found that after careful consideration of the record and the evidence submitted with the applicant's application, that neither individually or in the aggregate do the circumstances in his case rise to the level of extreme hardship. The application was denied accordingly. *See Interim District Director Decision*, dated December 19, 2003.

On appeal, counsel states that because the applicant and his qualifying family members have ties to the United States and the applicant's departure from the United States would cause financial hardship, the applicant has shown that his family would suffer extreme hardship and should be granted a waiver of inadmissibility. *Counsel's Brief*, undated.

The AAO notes that in the Director's Decision he finds the applicant inadmissible for one conviction, possession of no more than 2.5 grams of marijuana, on December 30, 1998. The record indicates that the applicant was also convicted of a second crime involving moral turpitude, solicitation of a sex act, on November 6, 2000.

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 actions leading up to the applicant's two convictions occurred on November 22, 1998 and September 12, 2000, less than 15 years from the present time. The applicant is therefore statutorily ineligible for a waiver pursuant to section 212(h)(1)(A) of the Act. He is however, eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(B) of the Act.

A section 212(h)(B) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship the alien himself experiences due to separation is irrelevant to section 212(h)(B) waiver proceedings unless it causes hardship to the applicant's spouse and/or child. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (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 to a qualifying relative. The factors include 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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).

The AAO notes that extreme hardship to the applicant's spouse and/or child must be established in the event that they reside in Mexico or in the event that they reside in the United States, as they are not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse and/or child in the event that they reside in Mexico. The applicant's spouse states in her affidavit, dated January 7, 2003, that she and her daughter are U.S. citizens and have spent their entire lives in the United States. She states that she only knows English and would have great difficulty relocating to Mexico. She states that her entire family

lives in the United States and she does not want to separate her daughter from her grandparents. The applicant's spouse submits no documentation to support her assertions. No evidence was submitted to show that the applicant and/or his spouse would not be able to support themselves and their child in Mexico. No country condition reports were submitted. The applicant spouse must submit documentation to support her claims. Thus, the record does not reflect that relocation to Mexico will result in extreme hardship to the applicant's spouse and/or child.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse and child remain in the United States. The applicant's spouse states that she would suffer extreme emotional and financial hardship as a result of the applicant's inadmissibility. The applicant's spouse states that she cannot work because of migraines and she relies on the applicant to support her and their daughter. The AAO notes that the record contains no medical records to support the spouse's statements regarding migraines and her inability to work. Furthermore, the record indicates that the applicant's spouse was employed as a receptionist in 2001 and that her mother, who was a co-sponsor for the applicant's lawful permanent residence application, is employed and earns \$30,000 a year. The record does not show that the spouse's mother could not help the spouse with her expenses. In addition, the applicant's spouse provides no evidence regarding the extent or any specifics of her emotional suffering.

Thus, a review of the documentation in the current record does not establish the existence of extreme hardship to the applicant's spouse and/or child caused by the applicant's inadmissibility to the United States. 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 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 appeal will be dismissed.

ORDER: The appeal is dismissed.