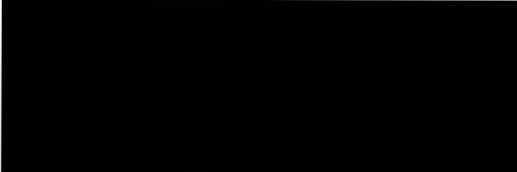


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FILE:

Office: CHICAGO, IL

Date:

OCT 20 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. § 1182(h)

ON BEHALF OF PETITIONER:



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, Chicago, IL and 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 crimes involving moral turpitude (domestic battery on two occasions). The record indicates that the applicant is married to a U.S. citizen and has five U.S. citizen children. The applicant seeks a waiver of inadmissibility in order to reside with his wife and children in the United States.

The district director concluded that the applicant neither, individually or in the aggregate established that the circumstances in the applicant's case rise to the level of extreme hardship. The application was denied accordingly. *See Decision of the District Director*, dated January 6, 2005.

On appeal, counsel states that the applicant has adequately established that his U.S. citizen child will suffer extreme medical and educational hardships and that his U.S. citizen spouse will suffer financial hardships as a result of his inadmissibility. Counsel also asserts that the applicant deserves the Service's favorable exercise of discretion for his health conditions, his rehabilitation and remorse of his previous convictions, his long employment history; and his close familial and financial connections to the United States. *Counsel's Appeal's Brief*, dated May 4, 2005.

The record indicates that the applicant was convicted of domestic battery on December 30, 1997 and on November 27, 1999. For the December 30, 1997 conviction the applicant paid a fine and attended counseling for domestic violence. For the November 27, 1999 conviction the applicant paid a fine, spent 30 days in jail, 24 months on probation and attended counseling for domestic violence. The AAO notes that both crimes involved the use of violence and force causing bodily harm to the applicant's spouse.

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-

(1) 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 activities for which the applicant is inadmissible occurred in 1997 and 1999, less than 15 years ago. 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 children. 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 (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.

Counsel asserts in his appeal's brief that the applicant's spouse and children will suffer extreme hardship as a result of relocating to Mexico. The AAO notes that the applicant has one son with his spouse and four children from a prior relationship that do not live with him. Counsel states that the applicant's spouse and children have substantial family ties to the United States and no family ties to Mexico. Counsel asserts that the applicant's spouse would not be able to find employment in Mexico and that his spouse and child would not be able to find adequate medical care in Mexico. The applicant states, in his declaration, that his son suffers from Attention Deficit/Hyperactivity Disorder, or AD/HD and requires specific ongoing treatment. He states that his son has been attending elementary school for the last two years and has established relationships with his friends and children. His son does not speak or read Spanish. The applicant submitted medical documentation to support the assertions regarding his son suffering from AD/HD. The AAO finds that the applicant's child would suffer extreme hardship as a result of relocating to Mexico. Relocation to Mexico could have a severe impact on the child's education and ability to prosper because of his diagnosis of AD/HD and his inability to speak or read the Spanish language. In *Matter of Kao*, 23 I&N Dec. 45 (BIA 2001), the Board of Immigration Appeals found that adolescents would suffer extreme hardship as a result of relocating to a country where they do not know the culture or the language. Thus, the record does reflect that relocation to Mexico will result in extreme hardship to the applicant's child.

Counsel also asserts that the applicant's spouse and children will suffer if the applicant is removed from the United States. Counsel asserts that the applicant's spouse and children will suffer emotionally and financially as a result of

the applicant's inadmissibility. Counsel states that the applicant provides the only income for the family. He earns a monthly income of approximately \$1,200-\$1,500 per month. The applicant's spouse has tried to find a full-time job, but currently works part-time for \$300 per month. Counsel states that the family's monthly expenses always exceed the family's income. Counsel asserts that the applicant's spouse will suffer extreme financial hardship without the applicant's income. In addition, the applicant states that his children who do not live with him would also suffer because he would not be able to pay his child support in Mexico. The AAO notes that no budgetary documentation was submitted and no documentation was submitted to show that the applicant's spouse could not find more work and/or her family members, who all live within a 60 mile radius of Bloomington, IL could not help her financially. Similarly, no documentation was submitted to show that the applicant's children who do not live with him would permanently suffer from his inadmissibility. No documentation was submitted to show the income and expenses of the children's mother and no documentation was submitted to support the assertions that the applicant would not be able to find work in Mexico. Furthermore, the applicant submitted no documentation to establish the extent of the emotional suffering his qualifying family members are experiencing and that this suffering is above and beyond what would normally be expected upon the removal of a family member. Thus, the AAO finds that the applicant has not shown that his qualifying family members would suffer extreme hardship as a result of his inadmissibility.

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 (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 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 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 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.