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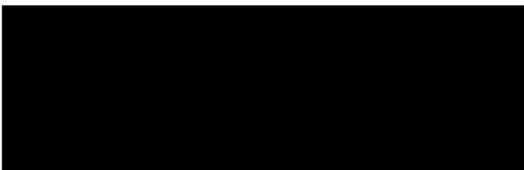
U.S. Department of Homeland Security
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U.S. Citizenship
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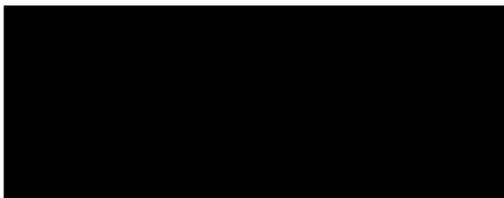
Date: APR 06 2007

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 District Director, Los Angeles, California. 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)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of crimes involving moral turpitude (sexual battery and theft). The record reflects that the applicant has a lawful permanent resident spouse and four U.S. citizen children. The applicant seeks a waiver of inadmissibility in order to reside with his family in the United States.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. *Decision of the District Director*, dated June 14, 2005.

On appeal, counsel asserts that the district director did not apply the relevant law and did not consider all of the relevant factors. *Form I-290B*, received July 17, 2005.

The record includes, but is not limited to, the applicant's spouse's statement, photographs of the applicant's family, letters of support and school records for the applicant's children. The entire record was reviewed and considered in arriving at a decision on the appeal.

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.

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance... is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

(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

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 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 extreme hardship on a qualifying family member.¹ If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

Counsel asserts that *Matter of O-J-O*, 21&N Dec. 381 (BIA 1996) is relevant to the applicant's case and was not used by the district director. *Form I-290B*. Counsel asserts that in *Matter of O-J-O*, the BIA found extreme hardship in the case of a single man with community ties to the United States. *Id.* The AAO finds *Matter of O-J-O* to be relevant in extreme hardship analysis, however it notes that the BIA based its decision on several factors, not solely on community ties to the United States. The court found extreme hardship as the respondent had lived in the United States during his critical formative years, he had significant church and community ties in the United States, he was fully assimilated into American culture and society, his assimilation made the prospect of readjustment to life in Nicaragua much harder than would ordinarily be the case, and he would face difficult economic and political circumstances in his native country, including the possible loss of an ongoing business concern. *Matter of O-J-O*, at 411. The AAO notes that the respondent in *Matter of O-J-O* submitted evidence and testimony to support his claims, whereas the applicant's case is nearly devoid of evidence of hardship.

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

¹ The AAO notes that as the activity resulting in the applicant's sexual battery conviction is not more than 15 years past the date of his adjustment of status application, he must apply for a waiver under section 212(h)(B) of the Act. A waiver of inadmissibility for the sexual battery conviction under section 212(h)(B) of the Act would also waive his theft conviction, of which the activities resulting in conviction occurred more than 15 years before the date of the applicant's adjustment of status application. The AAO notes that an application for admission or adjustment is a "continuing" application, adjudicated based on the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). As a decision has not been made on the case, the date of application for adjustment of status has technically not taken place yet.

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 Mexico 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 the 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 Mexico. In her May 17, 2001 statement, the applicant's spouse does not address whether relocating to Mexico would impose hardship on her family. *Applicant's Spouse's Statement*, at 1-2, dated May 17, 2001. Neither does the record include evidence of the presence of lawful permanent resident or United States citizen family ties to this country (other than the qualifying relatives themselves), the qualifying relatives' family ties outside the United States, the conditions in Mexico and the extent of the qualifying relatives' ties to Mexico, the financial impact of relocation to Mexico, health conditions that might be affected by a move to Mexico. Other than school records, there is no evidence of ties to the United States for the applicant's children. As such, the record does not evidence extreme hardship to a qualifying relative upon relocation to Mexico.

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 housewife, the applicant is the only source of income, she and her children would face great emotional and economic hardship were the applicant to be removed from the United States, and the applicant is a great father to their children. *Id.* at 1-2. However, the record does not reflect that the applicant's spouse would be unable to obtain employment in order to support her children or substantiating evidence of financial hardship were she to receive employment. The record also does not include substantiating evidence for any of the qualifying relatives in regard to emotional hardship based on their separation from the applicant. A review of the record does not evidence extreme hardship to a qualifying relative if the applicant returns to Mexico and the rest of the family remains in the United States.

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.

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.



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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. *See* 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.