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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES, CA

Date:

APR 17 2007

IN RE:

[REDACTED]

APPLICATION:

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

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)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(B), for having been convicted of two or more offenses for which the aggregate sentence to confinement was five or more years, two counts of voluntary manslaughter. The record indicates that the applicant is married to a lawful permanent resident and has four 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 found that the applicant was convicted of a crime of violence, as defined in 18 U.S.C. § 16. Accordingly, she referenced the regulation at 8 C.F.R. § 212.7(d), which, in the event that the applicant establishes extreme hardship to a qualifying relative, requires a showing of exceptional and extremely unusual hardship for the favorable exercise of discretion. However, the district director found that the record did not support a finding that the applicant's spouse and children would experience extreme hardship as a result of his inadmissibility. The application was denied accordingly. *See District Director Decision*, dated December 3, 2004.

On appeal, the applicant submitted a psychological evaluation to show extreme hardship to his spouse. *Form I-290B*, dated December 31, 2004.

The AAO notes that applicant appears to be represented; however the record does not contain Form G-28, Notice of Entry of Appearance as Attorney or Representative. All representations will be considered but the decision will be furnished only to the applicant.

The record of extreme hardship includes: a psychological evaluation for the applicant's spouse, a statement from the applicant's spouse and the applicant's children's birth certificates.

The record indicates that on May 31, 1983, the applicant was convicted of two counts of voluntary manslaughter for events that took place on January 2, 1983 in violation of Section 129.1 of the California Penal Code. The applicant was sentenced to seven years and four months imprisonment.

Section 212(a)(2) of the Act states in pertinent part, that:

(B) Multiple Criminal Convictions-

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

Section 212(h) states in pertinent part that:

(h) The Attorney General may, in his discretion, waive the application of subparagraphs...(B) . . . 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 record indicates that the applicant was convicted of two crimes involving moral turpitude. The applicant was convicted of two counts of voluntary manslaughter on May 31, 1983. The actions leading up to these convictions occurred on January 2, 1983, more than 15 years from the present time. 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 there has been no final decision made on the applicant's I-485 application, the applicant, as of today, is still seeking admission. Thus, the applicant satisfies the requirement at 212(h)(1)(A)(i)-the activities for which the applicant is inadmissible occurred more than 15 years ago. However, the only evidence in the record regarding the applicant's admission not being contrary to the national welfare, safety or security of the United States or regarding the applicant's rehabilitation is provided by the statements made by the applicant's spouse. The applicant's spouse states in her declaration, dated November 17, 2004, that the applicant has a close relationship with his children, he is a devoted husband and he is an important source of economic support to his family. She also claims that, since his 1983 conviction, the applicant has been an exemplary, law-abiding citizen, has been steadily employed, and has met his responsibilities as a father. The only evidence in the record that supports these assertions is a 1997 employment letter for the applicant indicating that the Holiday Inn in Torrance, California has employed him since 1990 as a banquet server. The applicant has failed to submit sufficient supporting documentation to show that he is rehabilitated and his admission would not be contrary to the safety of the United States. The current record does not meet the applicant's burden of proof in qualifying for a waiver under section 212(h)(1)(A) of the Act.

The applicant is also eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(1)(B) of the Act. Section 212(h)(1)(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, in this case the applicant's spouse or children. Hardship the alien himself experiences due to separation is not considered in section 212(h)(1)(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).

Furthermore, the AAO notes that when determining whether the Secretary should exercise discretion, the applicant is also subject to 8 C.F.R. §212.7(d), as an applicant who has been convicted of a dangerous crime.

8 C.F.R. §212.7(d) states in pertinent part:

(d) Criminal grounds of inadmissibility involving violent or dangerous crimes. The Attorney General, in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

The AAO notes that extreme hardship to the applicant's spouse and/or children 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 applicant's spouse states in her declaration, that she is suffering emotional and psychological hardship due to the possible denial of the applicant's admission. She fears that the separation of her children from the applicant would cause them extreme psychological and financial hardship. The applicant's spouse states that the applicant is the main source of financial support for the family and that she would be unable to find employment because her employment skills are minimal. Finally, the applicant states that she feels the applicant should be granted a favorable exercise of the Secretary's discretion as the positive factors in his case outweigh the negative factors. The applicant's spouse makes no assertions regarding the possibility of her family relocating with the applicant to Mexico.

In support of his wife's claims, the applicant submits a psychological evaluation from Dr. [REDACTED] dated February 8, 2005. Dr. [REDACTED] states that the applicant is very close to his four children. Dr. [REDACTED] states that the applicant is his family's sole provider with a monthly income of \$1,350 per month, which is below the poverty line. He outlines the applicant's monthly budget. Dr. [REDACTED] concludes that if the applicant is removed, his wife and children would be forced to move and would be completely dependent on federal and state aid. No documentation was submitted in support of this financial information. The only documentation of the applicant's income found in the record is a 1996 joint income tax return for the applicant and his spouse, showing their gross income as \$31,653, and a Form I-134, Affidavit of Support, filed the same year, that lists this same income level.

Dr. [REDACTED] administered the Beck Depression Inventory, Beck Anxiety Inventory and Whaler Physical Symptoms Checklist to the applicant's spouse and three of her children. Dr. [REDACTED] reached the conclusions that the applicant and his family are close knit and highly interdependent. He concludes that the applicant's spouse and children are suffering emotional hardship and would likely require some form of outpatient psychotherapy if the applicant were to be removed. He identifies the applicant's spouse and oldest daughter as likely to have a severe psychological reaction if the applicant's waiver request is denied.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report from Dr. [REDACTED] is based on a single interview involving both the applicant's spouse and children. The record fails to reflect an ongoing relationship with the applicant's family or any history of treatment for the

symptoms suffered by the applicant's family. Moreover, the conclusions reached in the submitted report, being based on a single self-reporting interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering Dr. [REDACTED]'s findings speculative and diminishing the report's value in determining extreme hardship. Therefore, a review of the entire record reflects that the applicant's removal will not result in extreme hardship to the applicant's spouse and/or children.

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.