

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

H₂

PUBLIC COPY

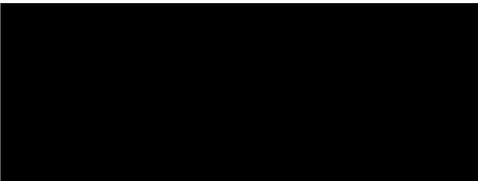


FILE: [REDACTED] Office: SAN FRANCISCO (FRESNO) Date: DEC 11 2007

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h); and 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, San Francisco, California, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The waiver application will be denied.

The applicant, a citizen of Mexico, was found inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant was also found inadmissible to the United States under 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 two crimes involving moral turpitude. The applicant is the son of a United States citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his mother.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on his mother and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

The applicant submitted two Forms I-290B, Notice of Appeal, on April 29, 2004. On the first Form I-290B, the applicant stated that he was not submitting a separate brief and/or evidence. However, on the second Form I-290B the applicant stated that a brief and/or evidence would be sent within ninety days.¹ The AAO did not receive this additional brief and/or evidence. As such, the AAO sent a follow-up letter to the applicant on October 25, 2007, requesting that the brief and/or additional evidence be sent within five business days.

The applicant did not respond to the AAO's letter. Thus, the AAO deems the record complete and ready for adjudication.

Section 212(a)(6)(C) of the Act states, in pertinent part, the following:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act states, in pertinent part, the following:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

¹ In his April 28, 2004 letter, the applicant stated that he needed ninety days in which to save money so that he could hire an attorney to prepare a brief, and the Form I-290B indicated that it was filed without the assistance of an attorney. Thus, it appears that the most recent attorney of record no longer represents the applicant (the most recent Form G-28 is over seven years old, and the applicant did not have the assistance of counsel at his permanent residency interview). However, neither counsel nor the applicant has stated that she no longer represents the applicant. Accordingly, the most recent attorney of record will receive a copy of this decision.

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

- (A)(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) of the Act provides, in pertinent part:

- (h) The Attorney General [now Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -
- (1) (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 . . .

Regarding the applicant's ground of inadmissibility under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), the record establishes that the applicant entered the United States, fraudulently, in May 1996. Specifically, the applicant admits that he presented a California identification document and claimed to be a citizen of the United States at the San Ysidro, California Port of Entry. He is therefore inadmissible to the United States for making a willful misrepresentation of a material fact (his identity) in order to procure entry into the United States.

Regarding the applicant's ground of inadmissibility under section 212(a)(2) of the Act, the record establishes that he pleaded guilty to the commission of two crimes involving moral turpitude in Modesto, California on November 4, 1993: (1) assault with a deadly weapon other than a firearm; and (2) willful cruelty to a child. According to the court record submitted by the applicant from the Stanislaus County Municipal Court, he was sentenced to sixty days in jail, suspended for thirty-six months.

Thus, the first issue to be addressed is whether the applicant's inadmissibility would impose extreme hardship on a qualifying family member. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion and grant the waiver.

Court decisions have repeatedly 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States 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.

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, 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 pursuant to section 212(i) of the Act. 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 held in *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

The applicant’s mother is a sixty-two year old native-born citizen of the United States. In her November 2, 2003 letter, the applicant’s mother states that she needs the applicant by her side because she is very ill; that she suffers from diabetes and high blood pressure; and that she sometimes cannot get up.

In his March 30, 2004 denial, the District Director noted that the applicant had submitted no evidence to document the assertion that his mother was in fact suffering from diabetes and high blood pressure. The District Director also questioned why, if the applicant’s mother requires his assistance to manage her medical care, he lives in Livingston, California while his mother lives in Fort Worth, Texas.²

On appeal, the applicant states that his mother suffers from diabetes, asthma, and a chronic knee condition; that she depends upon the applicant for her daily insulin injections; that he is sometimes required to pick up his mother from work because her knee hurts so much she cannot stand; that his mother only earns about \$100 per week and depends upon the applicant for financial support; and that she receives no financial support from anyone but him. The applicant also submits copies of several of his mother’s medical reports.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, “[e]conomic disadvantage alone does not constitute “extreme hardship.” *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that “lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.”); *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, “the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one’s home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent’s circumstances.”); *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); *INS v.*

² The applicant has since relocated to Fort Worth, Texas.

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's mother would face extreme hardship if she were to relocate to Mexico with the applicant. She would lose access to her medical care, and it also appears that she would leave behind an extended family network in Texas.

However, 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 mother will face extreme hardship if the applicant is removed. The record demonstrates that she faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a son is removed from the United States or refused admission. Although CIS is not insensitive to her situation, the financial strain of visiting the applicant in Mexico and the emotional hardship of separation are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law. Although the record now contains documentation of the applicant's mother's medical condition, it still does not establish that the applicant's presence is necessary for the management of his mother's daily affairs. Moreover, the AAO notes that on the Form I-601, the applicant stated that he has three sisters in Fort Worth, Texas (where his mother lives), all of who were lawful permanent residents of the United States and living with their mother as of August 6, 2000. The applicant has not established why his mother cannot obtain the assistance she requires from any of her daughters.

Again, court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship and have defined "extreme hardship" as hardship that is unusual or beyond that normally be expected upon the deportation or removal of a son. In this case, the applicant has not made such a demonstration.

In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States 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 District Director properly denied this waiver application. In adjudicating this petition, the AAO finds that the record fails to demonstrate that the applicant's mother would suffer hardship beyond that normally expected upon the removal of a son.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(h) and 212(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden.

ORDER: The appeal is dismissed. The waiver application is denied.