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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H2

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES, CA

Date:

DEC 27 2007

IN RE:

Applicant:

[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).

ON BEHALF OF APPLICANT:

[REDACTED]

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, Los Angeles. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application will be denied.

The applicant is a native and citizen of Mexico who was found to be 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 a crime involving moral turpitude. The applicant seeks a waiver of his ground of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h).

The district director determined that the applicant had failed to establish a qualifying family member would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601, Application for Waiver of Ground of Inadmissibility (I-601 Application) was denied accordingly.

On appeal the applicant indicates, through counsel, that the district director did not properly analyze his hardship claim, and the applicant asserts that the evidence in the record establishes his wife and children will suffer extreme hardship if he is unable to remain with them in the United States; or if they move to Mexico with him. The applicant concludes that his I-601 application should therefore be approved.

Section 212(a)(2)(A)(i) of the Act provides in pertinent part that:

[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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Criminal record evidence contained in the record reflects that on January 24, 2001, the applicant was convicted of Forging Official Seal, in violation of California Penal Code Section 472. The record reflects further that on July 20, 1994, the applicant was convicted of Theft of Property, in violation of California Penal Code Section 484(a).

California Penal Code Section 472 provides that:

Every person who, with intent to defraud another, forges, or counterfeits the seal of this State, the seal of any public officer authorized by law, the seal of any Court of record, or the seal of any corporation, or any other public seal authorized or recognized by the laws of this State, or of any other State, Government, or country, or who falsely makes, forges, or counterfeits any impression purporting to be an impression of any such seal, or who has in his possession any such counterfeited seal or impression thereof, knowing it to be counterfeited, and willfully conceals the same, is guilty of forgery.

California Penal Code Section 484(a) provides in pertinent part that:

Every person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him or her, or who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property, or who causes or procures others to report falsely of his or her wealth or mercantile character and by thus imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another, is guilty of theft. . . .

A review of the crimes committed by the applicant reflect that they qualify as crimes involving moral turpitude. The Board of Immigration Appeals (Board) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992) that:

[I]n determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. . . .

Each offense committed by the applicant contains an element of knowing or intentional corrupt conduct. Furthermore, both forgery and theft have specifically been found to be crimes involving moral turpitude. *See Matter of M*, 9 I&N Dec. 132 (BIA 1960) and *Matter of Seda*, 17 I&N Dec. 550 (BIA 1980.) *See also, Matter of Scarpulla*, 15 I&N Dec. 139, 140-141 (BIA 1974) and *United States v. Esparada-Ponce*, 193 F.3d 1133 (9th Cir. 1999.) The applicant was thus correctly found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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

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

. . . .
(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

Section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

The record reflects that the applicant married his wife on May 2, 1994. The applicant's wife became a naturalized U.S. citizen on June 5, 1998. The record reflects further that the applicant and his wife have four U.S. citizen children born: February 17, 1995; February 27, 2001; April 6, 2002; and September 13, 2004.

The applicant's wife and children are qualifying family members for section 212(h) of the Act, extreme hardship purposes.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors deemed relevant in determining whether an alien has established extreme hardship. 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 Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

U.S. 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). In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the U.S. Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The U.S. Ninth Circuit Court of Appeals emphasized that the common results of deportation are insufficient to prove extreme hardship.

The record contains the following evidence relating to the applicant's extreme hardship claim:

A February 4, 2003, affidavit signed by the applicant's wife (Mrs. [REDACTED]) indicating that she has lived in the United States most of her life, and indicating that she and her husband have been married for over thirteen years and have four U.S. citizen children together. Mrs. [REDACTED] states that she is a licensed barber, but that she is unable to work due to a right shoulder injury. She indicates that she cares for their children and that the applicant supports the family financially. Mrs. [REDACTED] indicates that her father and brother live legally in the United States, and that she and her extended family are very close. She indicates that she has a sister in Mexico, but that her sister is in the process of immigrating to the U.S. through her father. Mrs. [REDACTED] indicates that she does not want to be separated from her extended family in the United States, and that she wants her children to live and receive their education in the United States.

Medical evidence dated February 4, 2003, indicating that Mrs. [REDACTED] dislocated her right shoulder, and that she suffered pain related to her injury.

An undated letter from the applicant's daughter's bilingual teacher, indicating that in 3rd grade the child's reading skills improved due to her father's assistance at home.

A letter dated March 29, 2005, reflecting that the applicant and his family attend St. Joseph Catholic Church in Los Angeles, California.

A May 29, 2005, letter from [REDACTED] M.D., and a photo indicating that the applicant's son suffers from frequent respiratory infection and bronchitis.

The AAO has reviewed the totality of the evidence contained in the record. Upon review of the evidence, the AAO finds that the applicant has failed to demonstrate that his wife and children would suffer hardship beyond that which is normally expected upon the removal of a family member, if the applicant were denied admission into the United States. The AAO notes that the medical evidence contained in the record fails to establish that Mrs. [REDACTED] has a serious or permanent medical condition that does not allow her to work. In addition, the AAO notes that the picture and medical letter indicating that the applicant's son suffers from respiratory infection and bronchitis is vague and fails to establish that the applicant's son's condition is serious, or that his condition would be affected by the denial of the applicant's waiver application. Furthermore, the letter from the applicant's daughter's bilingual teacher fails to demonstrate the teacher's personal knowledge of the statements made, and the letter fails to establish that the applicant's daughter relies on her father's assistance in order to be able perform well in school. The AAO additionally notes that, "[t]he mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship." See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

The evidence in the record also fails to demonstrate that the applicant's wife and children would suffer extreme hardship if they moved with the applicant to Mexico. The record contains no evidence to corroborate the assertion that the applicant and his wife would be unable to find work in Mexico. The medical evidence contained in the record also fails to demonstrate that the applicant's son suffers from a medical condition that cannot be treated in Mexico. Furthermore, the Board held in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), that emotional hardship caused by severing family and community ties is a common result of deportation. The U.S. Ninth Circuit Court of Appeals held further in *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986), that hardship involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, did not rise to the level of extreme hardship.

Having found that the applicant is ineligible for relief, the AAO notes no purpose in addressing whether the applicant merits a waiver as a matter of discretion.

Section 291 of the Act provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to meet his burden in the present matter. The appeal will therefore be dismissed, and the application will be denied.

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