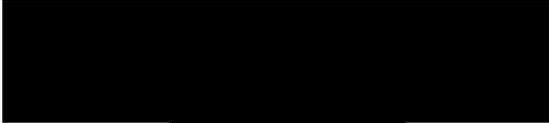




U.S. Citizenship
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H12

FILE:



Office: LOS ANGELES (SANTA ANA)

Date: FEB 22 2007

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

The applicant, a citizen of Mexico, was 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 spouse of a United States citizen, the father 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 wife and family.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant contends that his wife and family would suffer extreme hardship if he were required to return to Mexico, and submits additional documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

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 alien¹

¹ The AAO notes that section 212(h) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, CIS must then assess whether to exercise discretion.

Regarding the applicant's grounds of inadmissibility, the record reflects that he was convicted of two crimes involving moral turpitude.² The applicant's first crime involving moral turpitude, second-degree burglary, occurred in June 1992. The applicant's second crime involving moral turpitude, receiving known stolen property, occurred in April 2000. The applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, on March 14, 2002. The instant Form I-601 was filed on August 27, 2004.

The district director found the applicant inadmissible based upon the applicant's commission of these two crimes involving moral turpitude. As both of these crimes were committed after the applicant's eighteenth birthday, the district director correctly found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest this finding.

On appeal, counsel contends that the district director erred in failing to find that the applicant had not demonstrated that extreme hardship would befall a qualifying relative. Specifically, counsel states the following:

[The] [a]pplicant has been the primary financial and emotional provider for the family for the last 8 years. If [the] [a]pplicant were removed from the United States, [the applicant's wife] would not be able to financially provide for her family because she would not be able to make the mortgage payments, and feed and clothe her family. She could possibly lose the home they worked so hard to get for their family. Not only would they suffer extreme financial and emotional hardship, but they would also lose a "father" if they chose to remain in the United States and not accompany him to Mexico.

Furthermore, if [the applicant's wife] chose to accompany her husband to Mexico, she would be forced to make the unconscionable decision of going to Mexico with her children (or without her children) or remaining in the United States with her children and being separated from her husband. Placing [the applicant's wife] in a position to make such a decision is unconscionable in that either way she will suffer "extreme hardship" because she would be separated from some members of her family, her husband, or her children [emphasis in original].

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. 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.

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*

² The AAO notes that the applicant does not dispute the director's finding that these two offenses constituted crimes involving moral turpitude.

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 record reflects that the applicant’s wife is a forty-three-year-old citizen of the United States. She and the applicant have been married since March 27, 2001, and have a United States citizen child who is nearly six years old. Additionally, the record establishes that two of the applicant’s wife’s children from a previous marriage, aged 17 and 18, also live in the household.³ Both are United States citizens. The applicant’s wife’s parents live in the household as well.

The applicant works as an automobile detailer and automotive stereo installer. According to the most recent tax return in the record (for tax year 2003), the family had a gross adjusted income of \$31,766, of which \$20,800 was earned by the applicant. Accordingly, the applicant provides approximately 65.4% of the family’s annual income. If the family were to lose the applicant’s income, its annual income would be reduced to \$10,966, which is below the federal poverty level for a family of any size, let alone a family as large as the applicant’s wife’s.⁴

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. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

However, particularly in the Ninth Circuit, courts have recognized that, in certain cases, economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme. “Included among these are the personal hardships which flow naturally from an economic loss decreased health care, educational opportunities, and general material welfare.” *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th cir. 1981) (citations omitted); *see also Santana-Figueroa v. INS*, 644 F.2d 1354,

³ The applicant’s wife’s oldest child from her previous marriage no longer lives with the family; he is in the military and stationed in Iraq.

⁴ *See* Form I-864P, Poverty Guidelines, effective March 1, 2006. The poverty level for a family of three is \$16,600. Moreover, the applicant’s wife’s parents live with the family, which would compound the family’s economic deprivation.

1358 (9th cir. 1981) (“Economic loss often accompanies deportation. Even a significant reduction in standard of living is not, by itself, a basis for relief. . . . But deportation may also result in the loss of all that makes life possible. When an alien would be deprived of the means to survive, or condemned to exist in life-threatening squalor, the “economic” character of the hardship makes it no less severe.”) The AAO notes that this matter arises in the Santa Ana district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be considered in the assessment of hardship factors in this case.

The Ninth Circuit Court of Appeals has stated that, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also that, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

If she remained in the United States, the applicant’s wife would face the prospect of subsisting alone in a household with three children and her two elderly parents children on below-poverty wages without the assistance the applicant currently provides. The AAO finds that this economic hardship, combined with the separation from her husband that the applicant’s wife would face, rises to the level of extreme hardship as set out in *Salcido-Salcido v. INS*.

Although the AAO finds that the applicant’s wife would face extreme hardship if she were to remain in the United States without him, the applicant is required to also demonstrate that his wife would also face extreme hardship if she were to accompany him Mexico. There is no evidence in the record to demonstrate that she would face extreme hardship if she were to move to Mexico with the applicant; the evidence of record only addresses why the family cannot remain in the United States without him. As the applicant has submitted no evidence to establish that such extreme hardship would ensue, the AAO is unable to make such a finding at this time.

The AAO therefore finds that the applicant has failed to establish extreme hardship to his United States permanent resident spouse and citizen daughter as required under INA § 212(h), 8 U.S.C. § 1186(h).

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), 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.