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U.S. Citizenship
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MAR 06 2007

FILE:

[REDACTED]

Office: CHICAGO, IL

Date:

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)

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.

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, Chicago, Illinois. 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)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), as an alien convicted of a crime involving moral turpitude. The record indicates that the applicant is the child of lawful permanent resident parents and the father of two United States citizen children. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his lawful permanent resident parents and two United States citizen children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's parents and children and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director Decision*, dated May 18, 2005.

On appeal, the applicant, through counsel, contends that Citizenship and Immigration Services (CIS) "applied an inappropriate standard in determining" extreme hardship. *Form I-290B*, filed June 17, 2005.

The record includes, but is not limited to, counsel's brief, affidavits from the applicant's parents, a letter of reference from [REDACTED], a court disposition from the Circuit Court in Cook County, Illinois, birth certificates for the applicant's United States citizen children, and photos of the applicant and his family. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

(A) *Conviction of certain crimes.*—

- (i) In general.—Except as provided in clause (ii), any 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...

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

- (h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I)...of subsection (a)(2) if—
 - (1) (A) in the case of any immigrant it is established to the satisfaction of the [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

(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 established to the satisfaction of the [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...

(2) the [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

In the present application, the record indicates that the applicant entered the United States without inspection in November 1993. The applicant was nine years old when he entered the United States. Both of the applicant's parents are lawful permanent residents. The applicant has two United States citizen children, born on October 19, 2002 and June 10, 2004. On April 10, 2003, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On March 4, 2004, the applicant was arrested in Cook County, Illinois, for theft. On April 28, 2004, the applicant was found guilty of theft over \$300, a Class 3 felony, and sentenced to one year of probation. On April 12, 2005, the applicant filed an Application for Waiver of Ground of Inadmissibility (Form I-601). On May 18, 2005, the District Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to his lawful permanent resident parents and two United States citizen children.

Counsel asserts that since the applicant has "successfully completed his period of probation...he is not otherwise inadmissible." *Applicant's Brief attached to Form I-290B* at page 1. The AAO notes that even though the applicant has successfully completed his probation, he has still been convicted of a crime for immigration purposes. Section 101(a)(48) of the Act states that when an alien enters a plea of guilty, or is found guilty, and a formal judgment of guilt is entered by a court, where a judge has ordered some form of punishment, penalty, or restraint on the alien's liberty, there has been a conviction for immigration purposes. On April 28, 2004, the applicant pled guilty to theft in the Circuit Court of Cook County, Illinois. On the same day, a judge found the applicant guilty and sentenced the applicant to one year of probation, which is a restraint on the applicant's liberty. The applicant is clearly inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The applicant is seeking a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act. A waiver under section 212(h) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent or child of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's lawful permanent resident parents and United States citizen 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (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 to a qualifying relative. 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 applicant's mother and father state the applicant "supports financially and emotionally" his two United States citizen children. *Sworn Statements of [REDACTED] and [REDACTED]*, dated April 11, 2005. They claim that they "are a very close family who share financial burden in [their] joint residence." *Id.* Additionally, the applicant's father states, "even though [the applicant's father is] currently working, [the applicant] also works to help support [the] family." *Sworn Statement of [REDACTED]*, dated April 11, 2005. The applicant submitted a statement from his employer stating the applicant "has been employed at Antin Auto Repair since November, 2004" and is paid "\$250 cash." *Letter from [REDACTED]*, dated April 9, 2005. The AAO notes that this is the only evidence that the applicant submitted to demonstrate that he supports his children, their mother, and his family. Counsel claims that the applicant "has no job prospects in Mexico and no special skills or education that might help him find employment." *Brief attached to Form I-290B*, page 2, filed June 17, 2005.

Counsel states "the separation of a father from his minor children, and a son from his parents with whom he has always resided in combination with other financial, emotional, and cultural factors can rise to the level of extreme hardship." *Brief attached to Form I-290B*, page 2, filed June 17, 2005. The applicant failed to demonstrate that he contributes any finances to his children and parents, besides the \$250 cash he has been paid by [REDACTED]. *Supra.* The AAO notes that [REDACTED] simply states the applicant has "currently been paid 250.00 cash," and it is not clear if the applicant is paid that amount every week, month, or if that is the total amount the applicant has been paid since November 2004. *Id.* Counsel fails to establish extreme hardship to the applicant's parents and children if they remain in the United States. The applicant's father is employed, and presumably he, his wife, and seven other children, can help take care of the applicant's children. As United States citizens and lawful permanent residents, the applicant's parents and children are not required to reside outside of the United States as a result of denial of the applicant's waiver request. Additionally, beyond generalized assertions regarding country conditions in Mexico, the record fails to demonstrate that the applicant will be unable to contribute to his family's financial wellbeing from a location

outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

The AAO finds the applicant failed to establish that his parents and children would suffer extreme hardship if they accompanied the applicant to Mexico. The applicant's parents state they reside with their eight children, but they failed to demonstrate whether or not they have any other family ties in Mexico. The applicant's parents are natives of Mexico and the applicant's children are young enough, 2 and 4 years old, that they most likely could easily adjust to the culture of Mexico.

United States 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 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. In *Hassan, supra*, the Ninth Circuit 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. The AAO recognizes that the applicant's parents and children will endure hardship as a result of separation from the applicant. However, their situation is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's parents and children caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(2)(A) 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.