



U.S. Citizenship
and Immigration
Services

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H2

[Redacted]

FILE:

[Redacted]

Office: HARLINGEN, TX

Date: MAR 30 2007

IN RE:

Applicant:

[Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility.

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 application was denied by the District Director, Harlingen, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the district director for further action consistent with this decision.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Immigration and Nationality Act (The Act), 8 U.S.C. § 1182(h).

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

On appeal the applicant asserts, through counsel, that his wife and U.S. citizen children will suffer extreme financial and emotional hardship if the applicant is removed from the United States. The applicant does not address or dispute the district director's finding that he is inadmissible under the Act.

The applicant's Form I-601 application indicates that the applicant was found to be inadmissible to the United States based on a Texas, Driving While under the Influence (DWI) conviction, and a Texas, Public Intoxication (PI) conviction. The record of proceedings contains general documentation reflecting the applicant's convictions for these offenses. However, the criminal record information contained in the record is incomplete, and it does not establish on its own whether the DWI and PI offenses constitute crimes that would invoke a ground of inadmissibility against the applicant. The AAO notes further that the district director's decision makes no mention of the applicant's criminal convictions. Furthermore, the decision contains no discussion or statement whatsoever regarding the section 212(a)(2) statutory section(s) or grounds under which the applicant may have been found to be inadmissible. It is thus impossible for the AAO to determine a criminal basis on which the applicant is inadmissible.¹

¹ Section 212(a)(2) provides in pertinent part:

(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), or . . .

(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) provides in pertinent part that:

The Attorney General [now Secretary, Department of Homeland Security, "Secretary"] may, in

Furthermore, the AAO notes that the district director's Form I-601 denial decision does not cite to criminal grounds, or waiver of inadmissibility provisions contained in section 212(h) of the Act. Rather, the district director's decision cites to the fraud and misrepresentation grounds, waiver of inadmissibility provisions contained in section 212(i) of the Act, 8 U.S.C. § 1182(i). However, the district director's decision contains no discussion or statement regarding section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), statutory section(s) or grounds under which the applicant may have been found to be inadmissible on a fraud or misrepresentation related ground of inadmissibility, and the record contains no evidence to indicate that the applicant procured admission into the United States through fraud or misrepresentation.²

Because the AAO is unable to determine a basis for the district director's denial of the applicant's Form I-601 application, the AAO finds it necessary to remand the present matter to the district director for issuance of a new decision that clearly states: 1) the grounds of inadmissibility against the applicant; 2) the statutory waiver of inadmissibility section applicable in the present case; and 3) the extreme hardship claim made by the applicant, and the district director's analysis of the claim. If the new decision is adverse to the applicant, it shall be certified to the AAO for review.

ORDER: The matter is remanded to the district director for further action consistent with this decision.

his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) 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. . . .

² Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

(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)(1) of the Act provides that:

The Attorney General [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.