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IN RE:

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:

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. 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 crimes involving moral turpitude. The record indicates that the applicant is the beneficiary of an approved Immigrant Petition for Alien Worker (Form I-140). 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 wife and United States citizen child.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's child and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated September 21, 2004.

On appeal, the applicant, through counsel, contends that the applicant's son would suffer extreme hardship if the applicant were removed from the United States because his son suffers from medical conditions. *Letter attached to Form I-290B*, filed October 22, 2004; *see also Motion to Reopen*, filed June 6, 2006.

The record includes, but is not limited to, counsel's motion to reopen, court dispositions for the applicant's arrests and convictions, the birth certificate for the applicant's United States citizen child, and medical reports and documents regarding the applicant's son's medical condition. 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 initially entered the United States without inspection on September 5, 1990. On August 6, 1996, the applicant was arrested for attempted murder. On August 8, 1996, the applicant was convicted of two charges of assault with a deadly weapon or instrument other than a firearm, which is likely to produce great bodily injury, in violation of California Penal Code section 245(A)(1). On January 20, 1998, the applicant and [REDACTED], a Mexican citizen, had their son, [REDACTED]. On January 10, 2000, the applicant married [REDACTED]. On October 15, 2002, the applicant's employer filed a Form I-140 and an Application to Register Permanent Resident or Adjust Status (Form I-485). On December 26, 2002, the Form I-140 was approved. On August 26, 2004, the applicant filed a Form I-601. On September 21, 2004, the District Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to his United States citizen child.

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 removal is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen child. 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.

Counsel contends that if the applicant is removed from the United States, the applicant's son will suffer extreme hardship. *Motion to Reopen, supra*. Counsel states the applicant's son was diagnosed with a serious medical condition, "that will require continued medical supervision for years to come." *Id.* at 3. On January 11, 2005, the applicant's son was diagnosed with "velo-cardio-facial" syndrome. *Informing Conference by Dr. [REDACTED]* dated January 11, 2005. Dr. [REDACTED] recommended that the applicant's son have a "cardiology consult and echocardiogram," be seen by an immunologist, and have a "renal ultrasound." *Id.* The AAO notes that no medical documentation was submitted regarding the results of Dr. [REDACTED] recommended tests. On May 11, 2006, the applicant's son was also diagnosed with a "cleft palate." *Medical report by Dr. [REDACTED]* dated May 11, 2006. The AAO notes that the applicant's son was scheduled for surgery to correct his cleft palate, in the summer of 2006, and it has not been established that this condition has not been corrected.

The AAO finds that the applicant has demonstrated extreme hardship to his son if he remains in the United States without the applicant. The applicant's son is a minor with medical problems, who would be left alone in the United States if his father is removed. However, the applicant has not demonstrated that his son could not join him in Mexico. It has not been established that the applicant's child, who is 9 years old, would have difficulties rising to the level of extreme hardship in adjusting to the culture of Mexico. The AAO notes that the applicant failed to provide any evidence demonstrating that his son could not receive medical treatment for his medical problems in Mexico. The applicant and his wife are natives and citizens of Mexico and they failed to demonstrate whether or not they have any other family ties in Mexico. 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, therefore, finds the applicant has failed to establish extreme hardship to his son if he accompanies him to Mexico.

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. The AAO recognizes that the applicant's son will endure hardship as a result of separation from the applicant; however, he has not demonstrated extreme hardship if he were to join the applicant in Mexico.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's son 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.