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U.S. Department of Homeland Security  
20 Massachusetts Avenue NW, Room 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

#12



FILE:



Office: CIUDAD JUAREZ, MEXICO

Date:

NOV 07 2007

IN RE: Applicant:



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:

SELF-REPRESENTED

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 Officer in Charge, Ciudad Juarez, Mexico and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of Mexico. Pursuant to the record, the applicant was convicted of Homicide by Vehicle by the State of New Mexico based on a May 11, 1980 incident that resulted in the death of one person. The applicant was thus deemed to be inadmissible for having committed a crime involving moral turpitude. On May 17, 2005, the applicant filed a Form I-601, Application for Waiver of Ground of Excludability (Form I-601). The applicant sought 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 spouse and naturalized U.S. citizen child.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated October 27, 2005

In support of the appeal, the applicant provides a letter of good standing from the New Mexico State Police, dated May 9, 2005 and a letter from the applicant's son, a naturalized U.S. citizen, regarding the applicant's criminal record. The entire record was reviewed and considered in rendering this decision.

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)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General (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 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) The Attorney General (Secretary), in his discretion . . . has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

To begin, the AAO must determine if the applicant is eligible for a waiver of inadmissibility under section 212(h)(1)(A) of the Act. The applicant was convicted of Homicide by Vehicle by the State of New Mexico, based on a May 1980 incident.<sup>1</sup> The crime involving moral turpitude for which the applicant was found inadmissible occurred more than fifteen years ago. However, the applicant has failed to establish that the admission to the United States would not be contrary to the national welfare, safety, or security of the United States. Moreover, no documentation has been provided that confirms that the alien has been rehabilitated. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As such, it has not been established that the applicant is eligible for a waiver of inadmissibility under 212(h)(1)(A) of the Act.

The AAO must next determine if the applicant is eligible for a waiver of inadmissibility under section 212(h)(1)(B) of the Act. To be eligible under this section, it must be established that the inadmissibility bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son or daughter of the applicant. Hardship the applicant 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 lawful permanent resident spouse and their U.S. citizen son.

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

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<sup>1</sup> The AAO notes that the applicant's son, in his letter in support of the appeal, states that the applicant "...was 6 months in jail until proven innocent and the case was clear..." *Letter from Edmundo Marquez*. However, pursuant to the Judgment and Deferred Sentence executed by the District Judge, Sixth Judicial Circuit, State of New Mexico, dated June 23, 1980, the applicant plead guilty and was placed on probation; no finding of innocence was made.

individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) the BIA held that:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

In the Form I-601 filing, the applicant's spouse, a lawful permanent resident, provided a letter in support of the applicant; she stated that she had never been apart from the applicant in 37 years and needed the applicant for financial and emotional support. *Letter from* [REDACTED] The applicant provides no evidence of what specific support the applicant provides to his spouse, nor what hardship the applicant's spouse would face without the applicant to assist her, both financially and emotionally. While the applicant's spouse may need to make other arrangements with respect to her emotional and financial situation due to the applicant's physical absence in her life, it has not been established that any new arrangements would cause extreme hardship to the applicant's spouse.

In addition to failing to establish what emotional and financial support the applicant provides to his spouse, no specific evidence and corroborating documentation is provided that details exactly what assistance the applicant's son, a naturalized U.S. citizen who was 35 years old at the time this appeal was filed, needs from the applicant and what hardship the applicant's son would face without the applicant to assist him.

Finally, the AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she relocates with the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request. In this case, no evidence has been provided to establish that the applicant's spouse and/or son are unable to relocate to Mexico to reside with the applicant.

The applicant has failed to show that his U.S. citizen child and lawful permanent resident spouse would suffer extreme hardship if he were unable to reside in the United States, and moreover, the applicant has failed to show that his U.S. citizen child and lawful permanent resident spouse would suffer extreme hardship were they to relocate to another country. As such, it has not been established that the applicant is eligible for a waiver of inadmissibility under 212(h)(1)(B) of the Act.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion. In proceedings for application for waiver of grounds of inadmissibility under § 212(h), the burden of proving eligibility remains entirely with the applicant. 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.