

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H/2

[REDACTED]

FILE:

Office: PHOENIX, ARIZONA

Date: FEB 20 2008

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 District Director, Phoenix, Arizona, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be sustained.

The applicant, [REDACTED] is a native and citizen of Mexico who was found 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), for committing a crime of moral turpitude. The applicant sought a waiver of inadmissibility under section 212(h) of the Act, which the District Director denied, finding that the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the District Director*, dated February 27, 2006.

The AAO will first address the finding of inadmissibility.

Section 212(a)(2) of the Act states that:

(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 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines “conviction” for immigration purposes as:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.

The record reflects that in 1996 the applicant pled guilty to fraudulent acts in violation of A.R.S. section 46-215; 13-701, 702, 702.01, 707, 801, 802, 804; 806; 12-116.01 and 116.02. The judge ordered a suspended imposition of sentence and placed the applicant on F.A.R.E. Probation under the supervision of the Adult Probation Department until the fulfillment of the financial assessment or for a period of three years.

The applicant’s convictions involved welfare benefits and food stamps. In *Abdelqadar v. Gonzales*, 413 F.3d 668, 671-72 (7th Cir. 2005) and in *Matter of Adetiba*, 20 I&N Dec. 506 (BIA 1992), food stamp fraud was found to be a crime of involve moral turpitude. In *Miller v. INS*, 762 F.2d 21 (3d Cir. 1985) welfare fraud was found to involve moral turpitude. The AAO therefore finds that the record establishes the applicant’s inadmissibility under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for committing a crime of moral turpitude.

The AAO will now address the finding that a waiver of inadmissibility is not warranted.

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

...

(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 . . .

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The waiver application indicates that [REDACTED] qualifying relatives are her husband and U.S. citizen children. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant’s “qualifying relative.” *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the qualifying relative must be established in the event that the qualifying relative joins the applicant; and in the alternative, that he or she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

In addition to other documents, the record contains letters, income tax records, an evaluation of [REDACTED] children, real estate documents, criminal court records, birth certificates, a marriage certificate, information about Mexico, a list of the relatives of the applicant's husband who live in the United States, and a certificate of ordination.

The letter dated January 31, 2006 from [REDACTED] Senior Chaplain, Arizona State Prison Complex - Lewis, states that [REDACTED] has served as a religious volunteer for the Arizona Department of Corrections - Lewis Complex for the past six years. [REDACTED] states that without payment [REDACTED] provides weekly religious services to inmates and religious access for those who are mono-lingual Spanish.

The income tax records for 2004 reflect that the applicant's husband, [REDACTED], earned \$9,874 in business income; and earned wages, salaries, tips in 2003 of \$13,568 and \$19,047 in 2002.

The record conveys that [REDACTED] has two sons, who are 21 and 13 years old, and two daughters, who are 15 and 10 years old. Three of the children are U.S. citizens; the record does not reveal whether [REDACTED] eldest son, [REDACTED], is a lawful permanent resident.

The evaluation prepared by [REDACTED] and [REDACTED] conveys that the applicant's three youngest children, [REDACTED] and [REDACTED] "are unable to speak Spanish beyond a conversational level." The evaluators state that the children are not fluent in Spanish and "lack basic vocabulary and grammar structures necessary to access academic grade level content." They state that the Pizarro family is very united, going to church, shopping, and cooking as a family. They convey that because the children have a very close relationship with their mother they will feel abandonment or parental loss if their mother were deported and that they would be traumatized by this.

The record contains letters by the applicant's children in which they express their close relationship with their mother. The letter dated February 15, 2006 by [REDACTED] indicates that her parents preach at a prison, a food bank, and a church. The letters by the applicant's friends convey that the applicant is a good mother and is a preacher in the community. Some of the letters indicate that the applicant and her husband preach at a prison, a food bank, and a church.

The letter dated February 14, 2006 by [REDACTED] conveys that he has a close relationship with his wife. He states that together they attend Christian meetings, visit members of the church, and preach in prisons and other places. He states that he cannot concentrate at work because he is distressed, depressed, and worried about his wife. He states that his wife's father, who lives in Mexico is old, and that her two brothers have their own lives in Mexico.

The projected statement of changes in revenues and expenditures of the [REDACTED] family dated January 31, 2006, and prepared by [REDACTED], CPA, indicates that [REDACTED] is self-employed and that he earned \$3,000 in monthly income. The statement indicates that if [REDACTED] were to live in Mexico, Mr. [REDACTED] would no longer be able to support his family due to childcare, airfare, and the expenses associated with supporting the applicant in Mexico.

██████████'s financial projections reflect that ██████████ recently earned \$3,000 in monthly income. However, because ██████████ is self-employed and because income tax records reflect income of \$9,874 in 2004, \$13,568 in 2003, and \$19,047 in 2002, the AAO finds that the ██████████ family would experience extreme economic hardship in the event that ██████████'s monthly income, which is based on self-employment, were diminished, and his wife were removed from the country, as ██████████ would not have sufficient income to pay for childcare.

The applicant has established that her husband and son and daughters would experience extreme hardship if they remained in the United States without her.

Court decisions have found extreme hardship in cases where the language capabilities of the children were not sufficient for them to have an adequate transition to daily life in the applicant's country of origin. For example, in *Matter of Kao and Lin*, 23 I&N Dec. 45, 50 (BIA 2001), the BIA concluded that the language capabilities of the respondent's 15-year-old daughter were not sufficient for her to have an adequate transition to daily life in Taiwan. The girl had lived her entire life in the United States and was completely integrated into an American lifestyle and the BIA found that uprooting her at this stage in her education and her social development to survive in a Chinese-only environment would constitute extreme hardship. In *Ramos v. INS*, 695 F.2d 181, 186 (5th Cir. 1983), the circuit court stated that "imposing on grade school age citizen children, who have lived their entire lives in the United States, the alternatives of . . . separation from both parents or removal to a country of a vastly different culture where they do not speak the language," must be considered in determining whether "extreme hardship" has been shown. In *Prapavat v. INS*, 638 F. 2nd 87, 89 (9th Cir. 1980) the Ninth Circuit found the BIA abused its discretion in concluding that extreme hardship had not been shown to the aliens' five-year-old citizen daughter, who was attending school, and would be uprooted from the country where she lived her entire life and taken to a land whose language and culture were foreign to her.

The record here establishes that ██████████'s **U.S. citizen son and daughters are of school age and have lived their entire lives in the United States.** The language evaluation of the children reveals that they are not fluent in Spanish and "lack basic vocabulary and grammar structures necessary to access academic grade level content." Based on the holdings in *In re Kao*, *Ramos*, *Prapavat*, *supra*, and the conclusions reached in the evaluation of the ██████████ children, the AAO finds that ██████████ and ██████████ would experience extreme hardship if they were to join their mother in Mexico.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 212(h) of the Act, 8 U.S.C. § 1182(h).

The grant or denial of the above waiver does not depend only on the issue of the meaning of "extreme hardship." Once extreme hardship is established, the Secretary then determines whether an exercise of discretion is warranted.

The favorable factors in this matter are the extreme hardship to the applicant's family and the letters commending her character and community involvement. The unfavorable factor in this matter is the applicant's criminal conviction. The AAO notes that the applicant does not appear to have committed any crimes since her conviction in 1996.

While the AAO cannot emphasize enough the seriousness with which it regards the applicant's criminal conviction, it finds that the hardship imposed on the applicant's husband and children as a result of her inadmissibility outweighs the unfavorable factors in the application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.