

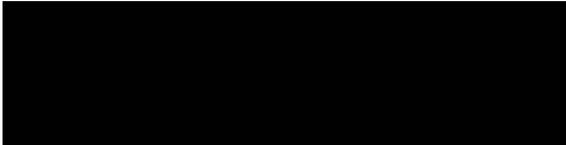


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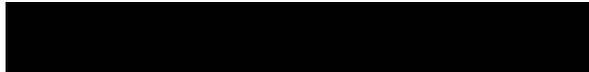


Office: PHOENIX, ARIZONA

Date: JAN 11 2008

IN RE:

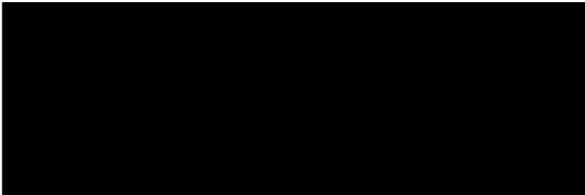
Applicant:



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:



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, Phoenix, Arizona, and 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), for having been convicted of a crime involving moral turpitude. The record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 United States citizen 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 qualifying relatives and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director Decision*, dated May 18, 2006.

On appeal, the applicant's wife states she and her son will suffer extreme hardship if the applicant is removed from the United States. *Form I-290B*, filed June 23, 2006.

The record includes, but is not limited to, statements from the applicant and his wife, the court disposition from the Superior Court of the State of Arizona, Maricopa County, and numerous letters of reference from the applicant's employers, co-workers, friends, and family. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on December 31, 2003, the applicant was convicted of endangerment by a Superior Court judge in Maricopa County, Arizona, and was sentenced to 120 days imprisonment and two (2) years probation.

Section 212(a)(2)(A) of the Act states in pertinent part:

- (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...or an attempt or conspiracy to commit such a crime...is inadmissible.

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

- (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 -
 - (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...

In the present application, the record indicates that the applicant entered without inspection in June 1994. On September 14, 1994, the applicant's father, [REDACTED], filed a Form I-130 on behalf of the applicant. On November 10, 1994, the applicant's Form I-130 was approved. On March 9, 2003, the applicant married [REDACTED], a United States citizen, in Arizona. On July 3, 2003, the applicant's wife filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On August 31, 2003, the applicant was arrested for aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs, a class 4 felony. On December 31, 2003, a Superior Court judge in Maricopa County, Arizona, convicted the applicant of endangerment and sentenced him to 120 days imprisonment and two (2) years probation. On March 29, 2004, the applicant's son, [REDACTED], was born in Arizona. On April 14, 2005, the applicant's second Form I-130 was approved. On April 13, 2006, the applicant filed a Form I-601. On May 18, 2006, the District Director denied the Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relatives under section 212(h)(1)(B).

The AAO notes that in regards to the applicant's criminal conviction, the applicant states he has been rehabilitated. See *Letter from the applicant*, dated April 4, 2006. The record reflects that the applicant has not been convicted of any additional crimes since his last conviction in 2003. The AAO notes that the applicant participated in group DUI counseling sessions at Desert Winds Counseling and "accomplished treatment goals." *Discharge Summary, Desert Winds Counseling*, dated October 5, 2004. The applicant's wife states the applicant "used this counseling program to not only strengthen his resolve to abstain from the use of alcohol, but to also strengthen [their] marriage." *Letter from [REDACTED]* dated April 3, 2006. Additionally, the applicant attended and completed a MADD Victim Impact Panel on June 9, 2004. *Letter from MADD Phoenix Metro Chapter*, dated June 9, 2004. Based on the applicant's completion of his counseling sessions and attendance at the victim impact panel, his probation officer recommended that the applicant be discharged early from his probation, which the Superior Court judge granted. *Order of Discharge from Probation*, dated August 15, 2005. Ms. [REDACTED], the applicant's probation officer, states the applicant "reported each month as directed, maintained a stable residence and full-time employment. He attended treatment while on probation and was randomly drug tested with negative results. As a result, he was early

terminated from probation as he met all requirements as directed.” *Letter from [REDACTED], Adult Probation Officer, Superior Court of Arizona, dated February 27, 2006.* Mr. [REDACTED] states the applicant “is a devoted husband and father. From everything [he has] seen and heard it appears to [him] that [the applicant] has made positive changes to rehabilitate his life. He has a steady job in Arizona, and he is dedicated to his wife and child.” *Letter from [REDACTED], Senior Pastor of The Gilbert Foursquare Church, dated March 22, 2006.* The applicant’s wife states that since the applicant’s criminal conviction he “has taken a hard look at his life and made a complete turn around. He knows the importance of his family, and his job...[The applicant] has made so many positive changes. He has decided alcohol will no longer be a part of [their] lives. He has invested more time into church...He always shows interest in learning, and developing his skills.” *Letter from [REDACTED] supra.* The applicant states he “acted very immaturely that night, because instead of being the considerate and responsible person [he] should have been [he] decided to drive home intoxicated rather than calling [his] wife. [He is] completely aware of the risk [he] took, and how irresponsible [his] behavior was that night...[The applicant has] quit drinking, and [his] house is absolutely alcohol free.” *Letter from the applicant, supra.* Ms. [REDACTED], the applicant’s mother-in-law, states she has “stood by [the applicant] as he has made every attempt to reform his life through ongoing counseling to assist him in finding other ways to celebrate life’s moments or deal with tragedy in his life. [She] now see[s] a dedicated father, husband and son-in-law...[She] is privileged to have him in [her] family. [The applicant] has made every effort to change his life, committing to live a life free of substances that affect the clarity of his judgment. He has acknowledged that he made a mistake by driving under the influence...[He has] long-standing work performance...[he owns] property in Mesa...[and a] desire to live a reformed life.” *Letter from [REDACTED] undated.* Ms. [REDACTED] states the applicant “has made some mistakes along the way. The most crucial point though, it that they’ve both learned from these mistakes, and have changed their lives for the better...Although mistakes were made, [she] honestly believe[s] that [the applicant has] made a change, that he’s learned from these mistakes.” *Letter from [REDACTED], dated April 5, 2006.* Mr. [REDACTED] states “[i]n the past several years [he has] witnessed [the applicant] make some very important changes in his life. He has chosen to live a life now with no alcohol, no exceptions...He is such a dedicated father, and husband, he sincerely loves his son.” *Letter from [REDACTED] Kitchen Manager, Pei Wei Asian Diner, dated March 29, 2006.* The AAO finds that even though the applicant has clearly been rehabilitated, he is not eligible for a waiver under section 212(h)(1)(A) of the Act, because his criminal conviction occurred less than 15 years ago. Therefore, the applicant must establish extreme hardship to his spouse and son to receive a waiver under section 212(h)(1)(B) 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 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 spouse and 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 wife asserts that she and her son will suffer extreme hardship if they are separated from the applicant. *Form I-290B, supra.* [REDACTED] Bagnasco states "if you could just see [the applicant's family] all together for a day, it's what life is all about. His son is full of life and his little personality is blooming into such a happy, smart and curious child...[The applicant] is a loving father, husband." *Letter from [REDACTED]*, General Manager, *Pei Wei Asian Diner Mesa*, undated. The applicant states that "[he] work[s] long hours to support [his son] and [his] wife, and also [he is] the sole provider for [their] family so that [his] wife can spend as much time with [their] son as she likes helping develop him." *Letter from the applicant, supra.* [REDACTED] states the applicant "has been a Kitchen Manager for us for the past four years and has done a fantastic job. He is responsible for maintaining and managing a staff of 25 employees...[The applicant's] current salary is \$45,000 plus a bonus of about \$10,000 per year...[The applicant] has a tremendous work ethic and is definitely an asset to our company." *Letter from [REDACTED] Operating Partner, Pei Wei Asian Diner*, dated March 3, 3006. The AAO notes that the applicant is employed full-time as a Kitchen Manager and he is the sole provider for his wife and son. The applicant's wife states if the applicant is removed, they would lose their home, the applicant's income, medical/dental/vision benefits, medical treatment for their son who has been diagnosed with respiratory difficulties, weekly contact with family and church family. *See Form I-290B, supra.* **The AAO notes that there was no medical documentation submitted establishing that the applicant's son suffers from any medical conditions.** The applicant's wife states that a separation from the applicant "would result in great difficulties for [their] family...It would cause great strain in [their] marriage, it would result in the loss of [their] home, incredible health benefits which [she is] currently and in need of for medications due to a recent diagnosis of diabetes and other female conditions. [They] would also loose [sic] [the applicant's] wonderful salary and job benefits." *Letter from [REDACTED] supra.* The applicant states his wife "has an early form of diabetes and is undergoing treatment to ensure that she does not develop insulin dependent diabetes. [His] employment allows [him] to provide health insurance for both [his] wife and son, ensuring that [his wife] receives the much needed medications she must take on a daily basis now." *Letter from the applicant, supra.* The AAO notes that there is no medical documentation in the record establishing that the applicant's wife is suffering from any medical conditions. Additionally, there was nothing from a doctor indicating exactly what the medical issues are, any prognosis or what assistance is needed and/or given by the applicant. The AAO notes that there was no documentation submitted establishing that the applicant's wife could not receive treatment for her medical conditions in Mexico. Further, there is no indication that the applicant's wife has to remain in the United States to receive her medical treatments. The AAO notes that neither the applicant nor his wife provided any statement regarding what, if any, hardship the applicant's wife and son would suffer if they joined the applicant in Mexico. It has not been established that the applicant's child, who is 3 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's wife is not employed; however, it has not been established that she has no

transferable skills that would aid her in obtaining a job in Mexico. The AAO finds that the applicant failed to establish that his wife and son would suffer extreme hardship if they joined the applicant in Mexico.

In addition, the applicant does not establish extreme hardship to his wife and son if they remain in the United States. As United States citizens, the applicant's wife and son are not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's wife states without the applicant's income they would lose their home and health benefits. *Form I-290B, supra*. However, the AAO notes that the applicant has not established that his wife could not obtain employment in the United States. Additionally, 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).

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 Board of Immigration Appeals (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 Court of Appeals 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 United States citizen wife and son will endure hardship as a result of separation from the applicant. However, their situation if they remain in the United States, 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 spouse and 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.