

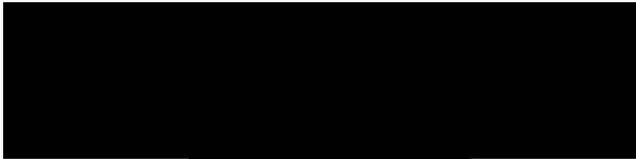
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U.S. Citizenship
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Services

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FILE:

Office: LOS ANGELES, CA

Date: JUL 16 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:

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 Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) 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 and the Form I-601 will be denied.

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

The district director found the applicant had failed to establish that a qualifying family member would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601 was denied accordingly.

On appeal the applicant asserts that he is aware of his past mistakes and that he is trying to live a productive and exemplary life. He indicates that he and his wife will suffer extreme hardship if they are unable to be together in the United States.

Section 212(a)(2)(A)(i) of the Act provides in pertinent part that:

[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.

Evidence in the record reflects that the applicant has the following criminal history:

January 19, 1995 - the applicant was convicted of Vehicular Homicide, in violation of the Revised Code of Washington, Section 46.61.520. The applicant was sentenced to 15 months imprisonment.

August 22, 2001 - the applicant was convicted of Disorderly Conduct: Prostitution, in violation of California Penal Code Section 647(b). He was placed on summary probation for 12 months and ordered to pay of fines and costs.

January 29, 2004 - the applicant was convicted of Disorderly Conduct: Lewd Act, in violation of California Penal Code Section 647(a). The applicant was placed on summary probation for 24 months and he was sentenced to 15 days in jail, plus payment of fines and costs.

November 16, 2004 - the applicant was convicted of Driving under Influence, in violation of California Vehicle Code Section 23152(b). The applicant was placed on summary probation for 36 months, and he was ordered to pay a fine or serve 13 days in jail, plus costs.

The Revised Code of Washington provides in pertinent part at section 46.61.520:

Vehicular homicide – Penalty

(1) When the death of any person ensues within three years as a proximate result of injury proximately caused by the driving of any vehicle by any person, the driver is guilty of vehicular homicide if the driver was operating a motor vehicle:

(c) With disregard for the safety of others.

(2) Vehicular homicide is a class A felony

California Penal Code section 647 provides:

Disorderly conduct - Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

- (a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.
- (b) Who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

California Vehicle Code section 23152(b) provides that:

It is unlawful for any person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

A review of the crimes committed by the applicant reflects that all but the Driving Under the Influence convictions qualify as crimes involving moral turpitude. The Board of Immigration Appeals (Board) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992) that:

[I]n determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. . . .

In *Matter of Franklin*, 20 I&N Dec. 867 (BIA 1994), the Board stated that:

Moral turpitude refers generally to conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general. . . .

All but the Driving Under the Influence offense committed by the applicant, contain an element of knowing or intentional corrupt conduct. Moreover, the Board indicates in *Matter of Franklin, supra*, that causing the death of another person through the conscious disregard of a substantial and unjustifiable risk that such a result could follow, involves moral turpitude. *See also, Garcia-Maldonado v. Gonzales*, 491 F.3d 284 (5th Cir. 2007.) Crimes of prostitution and lewd acts have also been held to be crimes involving moral turpitude. *See Matter of W-*, 4 I&N Dec. 401 (C.O. 1951) and *Matter of J-*, 2 I&N Dec. 533 (BIA 1946.) The applicant is thus inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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

The Attorney General [now, Secretary, Homeland Security, “Secretary”] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . 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

A section 212(h) of the Act waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

Evidence in the record reflects that the applicant is married to a U.S. citizen. The applicant’s wife is therefore a qualifying family member for section 212(h) of the Act, waiver of inadmissibility purposes. The AAO notes that hardship to the applicant may be considered only insofar as it is established that it causes direct hardship to his wife.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors deemed relevant in determining whether an alien has established extreme hardship. 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 Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, “relevant [hardship] factors,

though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

U.S. 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). In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the U.S. Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court of Appeals emphasized that the common results of deportation are insufficient to prove extreme hardship.

The applicant states in pertinent part on his Form I-290B, Notice of Appeal to the AAO, that, "[t]he only person I have in my life is my wife. The great hardship and broken heart would be unbearable for both of us." The applicant asks for forgiveness, and he asks for the opportunity to be with his wife. The applicant makes no other hardship claims on appeal, and the record contains no other statement from the applicant, and no statement from the applicant's wife. No other evidence is submitted relating to the applicant's extreme hardship claim.

The AAO finds that the applicant has failed to demonstrate that his wife will suffer hardship beyond that normally expected upon the removal of a family member, if he is denied admission into the United States. The applicant made no claim relating to whether his wife would suffer extreme hardship if the applicant were denied admission into the United States and she moved to Mexico to be with him. The applicant therefore failed to establish that his wife would suffer extreme hardship if she moved to Mexico. The applicant also failed to establish that his wife would suffer hardship beyond that normally experienced upon the removal of a family member, if she remained in the U.S. without the applicant. The applicant provided no detailed information or corroborative evidence to establish that his wife would suffer extreme emotional hardship if she remained in the U.S. without him. Moreover, the AAO notes that emotional hardship caused by severing family ties is a common result of deportation and does not constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996.)

Having found that the applicant is ineligible for relief, the AAO notes no purpose in addressing whether the applicant merits a waiver as a matter of discretion.

Section 291 of the Act provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to meet his burden in the present matter. The appeal will therefore be dismissed, and the Form I-601 application will be denied.

ORDER: The appeal is dismissed. The application is denied.