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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship and Immigration Services

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[Redacted]

FILE: [Redacted] Office: BALTIMORE, MARYLAND Date **JUL 25 2008**

IN RE: Applicant: [Redacted]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h), and Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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.

Robert P. Wiemann

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The AAO notes that on appeal, applicant's counsel requested 30-days to submit a brief and/or evidence to the AAO. *Form I-290B*, filed June 1, 2006. On June 22, 2006, counsel requested an additional 60-days to submit a brief and/evidence to the AAO. On June 26, 2006, counsel extension request was granted. On August 21, 2006, counsel requested an additional 90-days to submit a brief and/or evidence to the AAO. Counsel's extension requested was granted; however, the record contains no evidence that a brief and/or additional evidence was filed within the additional 90-days. Therefore, the record is considered complete.

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 a crime involving moral turpitude, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by presenting altered employment records. The record indicates that the applicant's parents are lawful permanent residents and she 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), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her United States citizen fiancée.

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's Decision*, dated May 1, 2006.

On appeal, counsel claims that "[t]he alleged incident occurred on July 23, 1990 almost 16 years ago and it has been extremely prejudicial to the applicant to proceed with this case without being able to review the alleged conviction record and properly prepare her case." *Counsel's letter*, filed August 22, 2006.

The record includes, but is not limited to, counsel's brief submitted with the Form I-601, letters from the applicant's parents, her sister, and fiancée, money transfer receipts, documents for the applicant's arrest, and court documents from the United States District Court, Southern District of Texas, McAllen Division. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant was arrested for knowingly possessing false identification documents on July 20, 1990. On July 23, 1990, a U.S. Magistrate found the applicant guilty of this charge and sentenced her to 90 days suspended sentence and three (3) years probation.

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.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

(i) In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

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

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

The applicant was convicted of knowingly possessing false identification documents, to wit: employment pay receipts and letter of employment, with the intent that such documents be used to defraud the United States on July 23, 1990. On July 19, 2004, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On February 28, 2006, the applicant's Form I-485 was denied. However, an application for admission or adjustment is a "continuing" application, adjudicated on the basis of the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). Since the applicant appealed the decision of the Form I-601, there has been no final decision made on the applicant's Form I-485, so the applicant, as of today, is still seeking admission by virtue of his application for adjustment of status. Therefore, the crime involving moral turpitude for which the applicant was found inadmissible occurred more than 15 years prior to the applicant's application for adjustment of status.

The AAO finds that the District Director erred in finding the applicant ineligible for a waiver under section 212(h)(1)(A) of the Act. Counsel claims the applicant "has not been involved in any other problems with the law and has not shown in any way a pattern of illegal behavior. From the time she entered the United States, she has been hardworking, has paid and filed income tax returns and has behaved like an outstanding member of this country." *Counsel's Brief*, dated March 23, 2006. The applicant claims that "[a]lthough [she] clearly recall[s] the facts surrounding the incident at the border, [she] still do[es] not recall being formally charged, appearing before a judge and receiving a criminal sentence...On the day of the incident, [she] was trying to gain admission into the United States to visit [her] father. [She] used very poor judgment and altered employment pay receipts...Since that day, [she] ha[s] abided by the laws of this country. This is an isolated incident that occurred more than fifteen (15) years ago...Since this incident [she] ha[s] not had any other problems with the law." *Applicant's Affidavit*, dated March 21, 2005; *see also affidavit from [REDACTED] and [REDACTED]*, dated March 20, 2006 ("Besides the incident of 1990, [the applicant] has always complied with the laws of this country and has behaved like a model individual.); *see also affidavit from [REDACTED]* dated March 20, 2006 (The applicant "pays her taxes all the time and besides the incident of July 20, 1990, she has not had any other problems with the law...She made a mistake fifteen (15) years ago and has remained an outstanding person ever since."); *see also affidavit from [REDACTED]*, undated (The applicant "is one of the most hardworking and honest person anyone would ever know. The incident of July 20, 1990 was an aberration and a misunderstanding. She has not had any other

problems with the law ever since.”). The applicant has not been convicted of any additional crimes since her last conviction in 1990, and has therefore established her rehabilitation. Additionally, the record of proceedings does not establish that the admission of the applicant to the United States would be “contrary to the national welfare, safety, or security of the United States.” However, the AAO finds the applicant is still inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by presenting altered employment records.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant’s lawful permanent resident parents. 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 asserts that the applicant’s lawful permanent resident parents will suffer extreme hardship if the applicant were removed from the United States. Counsel states the applicant’s father “has been experiencing health problems.” *Counsel’s Brief, supra*. The applicant’s parents state the applicant’s father “has began experiencing **medical problems**. More specifically he has been experiencing problems to the prostate.” *Affidavit from [REDACTED] and [REDACTED] supra*. The AAO notes that there is nothing from a doctor indicating exactly what the medical issues are, any prognosis or what assistance is needed and/or given by the applicant. Additionally, the AAO notes that there was no documentation submitted establishing that the applicant’s father could not receive treatment for his medical conditions in Mexico or that he has to remain in the United States to receive medical treatments. Further, there is documentation in the record that indicates that the applicant’s lawful permanent resident parents may already be residing in Mexico. The applicant submitted money transfer receipts dated March 29, 2005, August 16, 2005, and December 19, 2005, wherein she sent money to her father in Mexico. The applicant’s parents made no claim that they could not join the applicant in Mexico, and it has not been established that they have no transferable skills that would aid them in obtaining jobs in Mexico. Additionally, the applicant’s parents are natives of Mexico, who spent their formative years in Mexico, they speak Spanish, and they failed to demonstrate whether or not they have any family ties in Mexico. The AAO finds that the applicant failed to establish that her parents would suffer extreme hardship if they joined the applicant in Mexico.

In addition, the applicant fails to establish extreme hardship to her parents if they remain in the United States. As lawful permanent residents of the United States, the applicant's parents are not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's parents state the applicant "has been providing [them] with financial support on a monthly basis in the amount of at least \$400.00." *Affidavit from [REDACTED] and [REDACTED], supra*. The record fails to demonstrate that the applicant will be unable to contribute to her parent's financial wellbeing from a location outside of the United States. Additionally, the AAO notes that the applicant's sister helps to support her parents. *See affidavit of [REDACTED], supra* ("For the past fifteen (15) years [she and the applicant] have lived together and supported each other, [their] parents and younger siblings."). 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 her parents if they remain in the United States.

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 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 parents will endure hardship as a result of separation from the applicant. However, their situation 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 parents 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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) 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.