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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: LOS ANGELES, CA

Date:

MAY 02 2008

IN RE:

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.

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 District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 crimes involving moral turpitude (burglary and three receiving stolen property convictions). The applicant's spouse, child and two stepchildren are U.S. citizens. The applicant is seeking a waiver of inadmissibility in order to reside in the United States with his family.

The district director found that based on the evidence in the record, the applicant failed to establish extreme hardship to his U.S. citizen spouse and the application was denied accordingly. *District Director's Decision*, dated January 6, 2007 (served on February 7, 2007).

On appeal, counsel asserts that refusal of the applicant's admission will result in extreme hardship to his spouse due to her medical conditions. *Form I-290B*, received March 11, 2007.

The record includes, but is not limited to, counsel's brief, a psychological evaluation of the applicant's spouse, the applicant's statement, the applicant's spouse's statement, the applicant's I-601 letter and the applicant's spouse's medical records.

The record reflects that on August 9, 1996, the applicant was convicted of two counts of burglary under section 459 of the California Penal Code, and on August 9, 1996, February 13, 1997 and April 1, 1997 of receiving stolen property under section 496(A) of the California Penal Code. Therefore, the applicant is inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act for committing crimes involving moral turpitude.

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

(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, that:

(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)(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 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 U.S. citizen or lawfully resident spouse, parent or child of the applicant. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of lawful permanent resident or U.S. citizen family ties to 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to a qualifying relative must be established in the event that the qualifying relative relocates to Mexico or in the event that the qualifying relative remains in the United States, as the qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event that the qualifying relative relocates to Mexico. The applicant states that his spouse is not fluent in Spanish, her family and cultural ties are in the United States and she does not feel it is fair to remove her children from the United States due to lost opportunities. *Applicant's I-601 Letter*, at 2, dated November 1, 2006. Counsel states that the applicant's spouse suffers from acute pyelonephritis, a potentially organ and/or life-threatening infection that characteristically causes some kidney scarring and may lead to kidney damage, kidney failure, abscess formation, sepsis or sepsis syndrome. *Brief in Support of Appeal*, at 2, dated March 8, 2007. Counsel states that treatment of acute pyelonephritis requires hospitalization and a two-to-three week course of antibiotics. *Id.* Counsel states that the applicant's spouse is hospitalized at least two times a year with an acute pyelonephritis diagnosis, she would not be able to obtain necessary medical care as the quality of medical care in Mexico lags behind the United States and she would face potential nervous breakdowns due to domestic violence from a prior relationship. *Id.*

The applicant's spouse states that she has been diagnosed with acute pyelonephritis, is taking prescription medication (Levaquin, Bentyl, Flurazepan, Meperidine and Acetaminophen) to make it through the day and previously suffered a nervous breakdown as a result of domestic abuse. *Applicant's Spouse's Statement*, at 1-2, dated March 3, 2007. The applicant's spouse also states that she will not be able to obtain medical care in Mexico. *Id.* at 3. The applicant's spouse asserts that she will be unable to find work as she has no work experience or contacts and she will face psychological trauma in moving to a new country. *Id.* at 3. The applicant states that he would not be able to provide for his family as he would not be able to find

employment due to the poor economy in Mexico. *Applicant's Statement*, at 2-3, dated March 8, 2007. The record does not include evidence of hardship to the applicant's children if they relocated to Mexico. The record contains a psychological evaluation of the applicant's spouse prepared by [REDACTED], a clinical psychologist and licensed marriage and family therapist. A series of psychological tests administered by [REDACTED] find the applicant's spouse to have overriding anxiety and to evidence all of the characteristics of a victim of domestic violence, including fears related to safety and stability. *Psychological Evaluation*, at 1, 5-7, dated March 3, 2007. [REDACTED] notes that vestiges of her prior abuse still affect the applicant's spouse, including night terrors and recurrent anxiety. *Id.* at 9. In light of the findings of the psychological tests conducted by [REDACTED] the AAO concludes that the emotional state of the applicant's spouse, when combined with her physical health, her stated fears for herself and her children in Mexico, and the normal dislocations and disruptions created by a move to a foreign country would make relocation to Mexico an extreme hardship for the applicant's spouse.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. The applicant's spouse states in her psychological evaluation that she is not working because she gets sick too easily, she has a blood infection which causes fevers and she has been hospitalized. *Id.* at 2-3. Counsel states that the applicant takes care of his spouse, three minor children and their household when his spouse is ill. *Brief in Support of Appeal*, at 2. Counsel states that the applicant provides financial support for his spouse's treatment and his spouse is unable to work and provide basic financial support for her children. *Id.* In regard to the children's hardship, the applicant's spouse states that they will suffer psychologically and emotionally, and this will also cause her to suffer. *Applicant's Spouse's Statement*, at 3. The applicant states that he is looking out for the children's best interests and he has brought stability and prosperity to the family. *Applicant's I-601 Letter*, at 4.

The AAO again notes the psychological evaluation of the applicant's spouse prepared by [REDACTED], which not only establishes the applicant's spouse's emotional state, but finds the applicant to have had a profound influence on her recovery to date from domestic abuse. *Psychological Evaluation*, at 9. [REDACTED] concludes that for the applicant's spouse to function effectively as a parent, she requires the support and assistance of the applicant. *Id.* Based on [REDACTED]'s conclusions regarding the applicant's spouse's continuing need for the applicant's care and her inability to care for her children as a single parent, as well as the applicant's spouse's documented medical condition, the AAO concludes that remaining in the United States without the applicant would also constitute an extreme hardship for the applicant's spouse.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began

residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors in the present case include the applicant's convictions, unauthorized employment and unauthorized period of stay.

The favorable factors for the applicant include his U.S. citizen spouse, child and stepchildren, stable employment, length of time since his convictions as evidence of rehabilitation, extreme hardship to his spouse, evidence of academic achievement, payment of taxes and statements attesting to his good character.

The AAO finds that the crimes committed by the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.