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U.S. Citizenship  
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FILE:

Office: BALTIMORE, MARYLAND

Date:

NOV 05 2008

IN RE: Applicant:

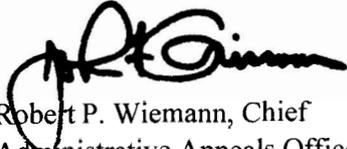
APPLICATION:

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, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Immigrant Petition for Alien Worker (Form I-140). 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 children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on his qualifying relatives and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated July 14, 2006.

On appeal, the applicant, through counsel, asserts that the "District Director failed to consider and meaningfully address all positive equities and favorable evidence...[he] summarily dismissed significant and outstanding equities without providing reasons for his conclusions...[he] failed to weigh all facts and circumstances and to balance the positive factors against the negative factors in the case...[he] failed to determine the cumulative effect of all hardship factors." *Form I-290B*, filed August 10, 2006.

The record includes, but is not limited to, counsel's brief, an affidavit from the applicant, a psychological evaluation on the applicant's children, the criminal court disposition for the applicant's theft conviction, and the order of expungement for the applicant's theft conviction. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on March 31, 1999, the applicant was convicted of theft, and was sentenced to sixty (60) days in jail and one (1) year 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:

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....

The applicant entered the United States without inspection in May 1993. On March 31, 1999, the applicant was convicted of theft, and was sentenced to sixty (60) days in jail and one (1) year probation. On September 21, 2001, the applicant's employer filed a Form I-140 on behalf of the applicant. On November 8, 2001, the applicant's Form I-140 was approved. On February 18, 2002, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On January 13, 2004, the applicant's Form I-485 was denied. On February 4, 2004, the applicant, through counsel, filed a motion to reconsider the denial of his Form I-485. On the same day, the applicant filed a Form I-601. On March 10, 2005, the District Director denied the applicant's motion to reconsider and denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relatives. On April 9, 2005, the applicant filed another Form I-601. On November 21, 2005, a judge for the District Court of Maryland for Charles County issued an order of expungement of police and court records for the applicant's theft conviction. On July 14, 2006, the District Director denied the applicant's second Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relatives.

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 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 (Board) 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 AAO notes that the applicant provided documentation establishing that his theft conviction has been expunged; however, he has still been convicted of a crime for immigration purposes. Section 101(a)(48) of the Act states that when an alien enters a plea of guilty, or is found guilty, and a formal judgment of guilt is entered by a court, where a judge has ordered some form of punishment, penalty, or restraint on the alien's liberty, there has been a conviction for immigration purposes. The AAO notes that the applicant was found guilty of theft and sentenced to sixty (60) days in jail and one (1) year probation. The applicant is clearly inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Counsel asserts that the applicant's United States citizen daughters would face extreme hardship if the applicant is removed to Mexico. *See Appeal Brief*, filed September 11, 2006. The applicant states that he has been employed since 1997 and "[t]hat, as a result of [his] steady employment and good earnings, [he has] been able to provide a decent standard of living, including a middle class home and the basic necessities of life, to [his] daughters." *Affidavit from the applicant*, dated September 9, 2006. The AAO notes that the applicant's daughters rely on the applicant for their daily needs; however, the applicant has been working in construction since 1997, and it has not been established that lacks transferable skills that would aid him in obtaining a job in Mexico. Dr. [REDACTED] states the applicant's daughters "are alert, well-adjusted children who clearly rely on the nurturing, supportive relationship which their parents provide them. Their continued development... would be compromised should they lose the structure of the family from which they obviously benefit. [The applicant] is currently the sole breadwinner of the family." *Psychological Evaluation by [REDACTED]*; *Psy.D.*, dated February 2, 2004. The AAO notes that although the input of any mental health professional is respected and valuable, the submitted evaluation is based on one interview between the applicant's children and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's children. Moreover, the conclusions reached in the submitted evaluation, being based on one interview, does not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

The AAO finds that the applicant has demonstrated extreme hardship to his daughters if they remain in the United States without the applicant; however, it has not been established that the applicant's daughters could not join the applicant in Mexico. The AAO notes that it has not been established that the applicant's daughters, who are 5 and 7 years old, would have difficulties rising to the level of extreme hardship in adjusting to the culture of Mexico. Additionally, the AAO notes that the applicant's older daughter's "receptive language skills are better developed in Spanish than they are in English." *Id.* Furthermore, all of the applicant's family resides in Mexico. *Affidavit from the applicant, supra.* The AAO notes that beyond generalized assertions regarding country conditions in Mexico, 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). The AAO, therefore, finds the applicant has failed to establish extreme hardship to his daughters if they accompany him to Mexico.

In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant's daughters will endure hardship as a result of separation from the applicant; however, the applicant has not demonstrated extreme hardship if they were to join the applicant in Mexico.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's daughters 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.