

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

[Redacted]

FILE:

[Redacted]

Office: MIAMI, FL

Date:

NOV 26 2008

IN RE:

[Redacted]

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:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grisson".

John F. Grisson, Acting Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Miami (Tampa), Florida. The matter 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 crimes involving moral turpitude. The record indicates that the applicant has a lawful permanent resident mother. The applicant seeks a waiver of inadmissibility in order to reside in the United States.

The interim district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Interim District Director's Decision*, at 2, dated May 7, 2007.

On appeal, counsel asserts that the applicant has only committed one crime involving moral turpitude, he is eligible for the petty offense exception and a waiver is not needed. *Form I-290B*, received June 8, 2007, *Brief in Support of Appeal*, at 5, dated June 8, 2007. Counsel asserts that the interim district director does not clearly point out which of the applicant's criminal offenses was considered a crime involving moral turpitude. *Id.*

The record includes, but is not limited to, counsel's brief, an employer letter for the applicant's mother and country conditions information on Mexico. The entire record was reviewed and considered in arriving at a decision on the appeal.

The AAO notes that the interim district director did not clearly point out which criminal offenses were considered a crime involving moral turpitude. The record reflects that the applicant was convicted on or around February 18, 1999 and March 17, 2000 of petit theft under Florida Statute § 812.014. The orders for the applicant reflect that he was charged and convicted for petit theft, which is located at § 812.014 of the Florida Statutes. This section states that, "A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either **temporarily or permanently**, deprive the other person of a right to the property..." In *Matter of Grazley*, the Board of Immigration Appeals (BIA) held that theft is a crime involving moral turpitude only when a permanent taking is intended. *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973). The BIA has held that the courts and immigration authorities may look to the record of conviction if the statute under which an alien is convicted includes some offenses which involve moral turpitude and others which do not (i.e. a divisible statute), in order to determine the offense for which the alien was convicted. See *Matter of Short*, 20 I&N Dec. 136 (BIA 1989). The court in *Matter of Short* included the indictment, plea, verdict, and sentence in its definition of the record of conviction. *Matter of Short*, at 137-38. The record of conviction does not include the arrest report. See *In re Teixeira*, 21 I&N Dec. 316, 319-20 (BIA 1996). However, the applicant has not submitted the record of conviction in order for the AAO to determine under which part of the statute he was convicted. The AAO notes that it is the applicant's burden of proof to establish that he is not inadmissible under the Act. Accordingly, he has failed to demonstrate that his 1999 and 2000 convictions are not convictions for crimes involving moral turpitude.

The applicant was also convicted on December 18, 2006 for defrauding a lawful urine test under Florida Statute § 817.565, a crime involving moral turpitude. As the record reflects that the applicant has committed three crimes involving moral turpitude, he must seek a waiver under section 212(h) of the Act for this ground of inadmissibility.¹

The record also reflects that the applicant was convicted on August 9, 2006 for possession of under 20 grams of cannabis under Florida Statute § 893.13(6)(b). Therefore, the applicant has committed a violation of a law relating to a controlled substance and is inadmissible under section 212(a)(2)(A)(i)(II) of the Act. A waiver of this ground of inadmissibility is also available under section 212(h) of the Act.

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, or
- (II) A violation (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), 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) and of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana 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.

The AAO notes that section 212(h) of the Act provides that a 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.

¹ The AAO also notes that the exception under section 212(a)(2)(A)(ii)(I) of the Act does not apply as it relates to an alien who has committed only one crime.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of lawful permanent resident or United States 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 the applicant's mother must be established whether she resides in Mexico or the United States, as she 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 his mother in the event that she resides in Mexico. Counsel states that the applicant's mother was born in Mexico, has been in the United States since 1988, is a single mother, does not have any family in Mexico, has six grandchildren and is devoted to her family. *Brief in Support of Appeal*, at 2-3, 10. Counsel states that the applicant's mother has a job where she is paid \$350.00 a week and she is surrounded by her sons, daughters, brother and sister. *Id.* at 10. Counsel states that the applicant's mother will be homeless in Mexico and her other sons and daughters will suffer emotionally and economically. *Id.* at 8-9. Counsel states that the applicant's mother does not have an advanced degree and, combined with the economic situation in Mexico, it is highly unlikely that she will find employment there. *Id.* at 9. Counsel states that Mexico is suffering from ongoing economic and social deprivations including real wages, underemployment, inequitable income distribution, and little education and professional advancement. *Id.* Counsel states that the best the applicant's mother could hope for is a manual labor job for the applicant, and this will not be enough for them to survive. *Id.* Counsel also states that applicant's mother will be unable to obtain the same quality of health care in Mexico. *Id.*

The record includes general country conditions information on Mexico and an employer letter for the applicant's mother. However, the record does not include sufficient substantiating evidence of emotional, financial or any other types of hardship that the applicant's mother would experience in Mexico. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). **Based on the record, the AAO finds that the applicant has not demonstrated that his mother would suffer extreme hardship if she resided in Mexico permanently.**

The second part of the analysis requires the applicant to establish extreme hardship in the event that his mother remains in the United States. Counsel states that the applicant's mother will undergo extreme psychological stress due to the homeless situation that the applicant will encounter in Mexico, she will not be able to visit the applicant as she does not have the financial resources to travel and maintain her household, she will have to work two jobs at the age of 57 to sustain her household and support the applicant, and the applicant is responsible for taking care of her. *Id.* at 8, 10. The applicant states that he lives with his mother, pays most of her bills, it would be hard for his family to help her keep up with her payments, and she would be very depressed and suffer a lot. *Applicant's Statement*, at 3, undated. The record does not include sufficient substantiating evidence of psychological, emotional, financial or any other type of hardship that the

applicant's mother would experience without the applicant. Based on the record, the AAO does not find that the applicant's mother would suffer extreme hardship if she remained in the United States.

U.S. court decisions have additionally 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *Hassan v. INS*, *supra*, 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. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his mother would suffer extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in an additional discussion of whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) 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.