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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: SEP 11 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:

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 Director, California Service Center. 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 determined 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 a crime involving moral turpitude (aggravated assault). The applicant is the father of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). His spouse and parents are also lawful permanent residents of the United States, and the applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his spouse, parents, and children.

The service center director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Service Center Director* dated May 1, 2006.

On appeal, counsel asserts that the waiver application did not adequately present evidence of extreme hardship to the applicant's qualifying relatives, and counsel submitted additional evidence with the appeal in support of the waiver. *See Brief in Support of the Appeal* at 4. In support of the appeal, counsel submitted copies of birth certificates and permanent resident cards for the applicant's children, wife, and parents; affidavits from the applicant, his parents, his wife, and his daughter; copies of a deed for the applicant's home and certificates of title for vehicles owned by the applicant and used to operate his painting business; business licenses and income tax returns for the applicant's three businesses; letters from a physician who provides treatment to the applicant's spouse and parents for various medical conditions; letters and other documentation describing the applicant's ties to the community and his good moral character and rehabilitation; and documentation concerning economic and political conditions in Mexico. The entire record was reviewed and considered in arriving at a decision on the appeal.

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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) states in pertinent part:

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-

(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 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 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, son or daughter 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 spouse, parents, and daughter. 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 pursuant to section 212(i) of the Act. These 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.

In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

The record reflects that the applicant is a forty-five year-old native and citizen of Mexico who has resided in the United States since June 15, 1991, when he entered as a visitor for pleasure. He married his wife, a forty-four year-old lawful permanent resident, on June 26, 1982, and they reside together in Woodstock, Georgia with their three children, including their twenty-four year-old U.S. Citizen daughter. The record further reflects that the applicant's mother and father, who are seventy-nine and seventy-four years old, are lawful permanent residents who have resided in the United States since 1988. They live near the applicant and his family in Woodstock, Georgia.

The applicant was arrested on October 5, 1997 in Cobb County, Georgia and was convicted of aggravated assault and criminal trespass on February 16, 1998. He was sentenced to a term of twelve months imprisonment, which was suspended, and seven years probation and was ordered to pay a fine. The applicant was also convicted on May 16, 1995 of obstruction of an officer in Cherokee County, Georgia and ordered to pay a fine.

Counsel states that there are several factors that, when considered in the aggregate, would amount to extreme hardship to the applicant's parents, spouse, and daughter if he were denied admission to the United States. Counsel asserts that the applicant's parents would suffer extreme hardship if the applicant were removed from the United States because he is their sole provider and they are unable to work due to their age and poor health. *See Brief in Support of Appeal* at 9. The applicant's mother states,

I have high blood pressure and health problems related to diabetes, I also have to take various kinds of medicine that are really expensive. Another reason to live in this country that I now call mine, is that like I said all my children live here and they help me in so many ways like taking me to the doctor, translating, etc. They can not help us much financially because they have their own families and expenses, but my son [REDACTED] has been taking care of us by buying a house for us and he also pays our home taxes, insurance, etc. and also gives us money for food. We completely rely on him to live. *Undated letter from [REDACTED]*.

Letters from the applicant's brothers and sisters state that they cannot afford to provide financial support for their parents like the applicant does because of their own families' expenses. The applicant's sister states she works part time at a company owned by the applicant and that her husband must send money to his own father in Mexico. *See affidavit of [REDACTED] dated June 16, 2006.* She further states: "[W]e don't have enough income to help my parents with their necessities" and states her parents need frequent tests to monitor their high blood pressure and diabetes and do not have Medicare or Medicaid. She additionally states that the applicant is the one that has been "responsible for them for a long time." The applicant's brother states:

My living expenses are high and my mortgage is very expensive. For this same reason I am not able to help my parents in any way. My brother, who is better accommodated, is the person who has taken charge in taking them to doctors' visits and pays for medicines. . . . They depend on him not only for financial support but also emotional. I don't think that they would be able to survive without him. *See affidavit of [REDACTED] dated June 16, 2006.*

The applicant's father states: "If [the applicant] was to be removed from the United States I don't think that we would be able to survive. We don't have any properties in Mexico and most of our family lives here. so that would leave us with no place to live, and no family." *Undated letter from [REDACTED]*

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. Counsel submitted letters from a physician detailing the treatment undergone by the applicant's parents for their various medical conditions, which include hypertension and diabetes, as well as the cost of various treatments and tests and they have undergone and medications they have been prescribed. *See letters from [REDACTED] M.D. dated May 15, 2006.* [REDACTED] states, "Without monetary support from [REDACTED] [REDACTED] may suffer catastrophic effects stemming from uncontrolled Diabetes Mellitus, Hypertension and/or Hypercholesteremia Biannual and annual laboratory test [sic] must be completed to monitor [REDACTED]'s blood glucose levels, cholesterol and triglyceride levels, and kidney function." *See letter from [REDACTED] concerning [REDACTED] dated May 15, 2006.* He further states that the applicant's father "might endure endless unnecessary hospitalizations from congestive heart failure,

pulmonary edema, myocardial infarction, cerebral vascular accident” without the “substantial monetary support from [REDACTED] which enables him to undergo various important tests and screenings. *See letter from [REDACTED]s concerning [REDACTED] dated May 15, 2006.*

Counsel has established that the applicant’s parents would suffer extreme hardship whether they relocate to Mexico in order to reside with the applicant or remain in the United States in the absence of the applicant. The situation presented in this application rises to the level of extreme hardship because the record demonstrates that the applicant’s parents would suffer extreme financial and physical hardship if they remained in the United States without the applicant, due to the loss of his financial support combined with their advanced age and poor health. The record also establishes that the applicant’s parents would suffer extreme hardship if they relocated to Mexico because they would be separated from their extended family in the United States, where they have resided for twenty years. As noted above, separation from close family members is a primary concern in assessing extreme hardship. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998). They would also suffer financial hardship because they would lose their home in the United States and the financial support of the applicant, who would leave behind the three businesses he owns and operates in the United States. They would also be unable to work and support themselves in Mexico because of their age and poor health. The suffering experienced by the applicant’s parents would surpass the hardship typically encountered in instances of separation because of their age, medical conditions, and the loss of access to regular medical care in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. 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) 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 unfavorable factors in this matter are the applicant's criminal convictions for aggravated assault and criminal trespass in 1998 and obstructing an officer in 1995 as well as his unlawful presence in the United States for several years after he was admitted as a visitor for pleasure in 1991.

The favorable factors in this matter are the extreme hardship to the applicant's parents, the passage of over ten years since the conduct for which the applicant was convicted, and his apparent rehabilitation. The AAO notes that the applicant has taken responsibility for his actions, and it appears he has been spoken about the matter with his family members and has not minimized the seriousness of the incident. His daughter indicates in her letter that the applicant spoke to her and her brother shortly after the incident and explained the importance of making the right decisions and facing the consequences. She states: "Although at the time I didn't fully understand, as I grew older I became more and more aware of the truthfulness he spoke to us that night." *See undated letter from [REDACTED]*. The applicant also has extensive family and community ties in the United States, as established by numerous letters from relatives and business associates describing his good moral character, work ethic, and professionalism. He also has a history of stable employment and strong business and property ties in the United States, including his residence, office, and vehicles and other property used in the operation of his businesses. There is also evidence of service in the community, including donations to charities and participation in committees to improve services to the Latino community in Cherokee County, Georgia.

The AAO finds that applicant's criminal conduct 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has now met that burden. Accordingly, the previous decision of the service center director will be withdrawn and the application will be approved.

ORDER: The appeal is sustained.