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20 Massachusetts Ave., N.W., Rm. 3000  
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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: CIUDAD, JUAREZ, MX

Date: **AUG 30 2007**

CDJ 2004 589 063

IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(a)(9)(B)(v) and 212(h) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 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 application was denied by the Officer in Charge, Ciudad Juarez, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application denied.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to sections 212(a)(9)(B)(i)(II) and 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(B)(i)(II) and 1182(a)(2)(A)(i)(I), for having been unlawfully present in the United States for more than one year, and for having been convicted of a crime involving moral turpitude. The applicant seeks a waiver of his grounds of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(h) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(h).

The officer in charge determined the applicant had failed to establish that a qualifying family member would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601 Application) and Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212 Application) were denied accordingly.

On appeal the applicant asserts, through counsel, that he does not have an extensive criminal record, and that several of the criminal offenses mentioned in the office in charge's denial letter were dismissed. The applicant asserts, through counsel, that his theft conviction may not constitute a crime involving moral turpitude. The applicant indicates that if his theft conviction does not constitute a crime involving moral turpitude, then only one of the crimes that he has been convicted of -Sexual Abuse in the 3<sup>rd</sup> Degree- would constitute a crime involving moral turpitude. The applicant indicates further, through counsel, that if this is the case, he would be entitled to an exception to his ground of inadmissibility under section 212(a)(2)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(ii)(II). The applicant asserts, through counsel, that the favorable factors in his case outweigh the unfavorable factors, and he asserts that his U.S. citizen wife and child will suffer extreme emotional and financial hardship if he is denied admission into the United States.

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

(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) . . . .

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits

having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The Board of Immigration Appeals (Board) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992) that:

[I]n determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. . . .

The record reflects that the applicant was convicted for the following offenses:

- 1) April 15, 1992 – Sexual Abuse, 3<sup>rd</sup> Degree, in violation of Oregon Revised Statute (ORS) 163.415.
- 2) December 8, 1992 – Theft, 3<sup>rd</sup> Degree, in violation of ORS 164.043.
- 3) December 8, 1992 – Harassment, in violation of ORS 166.065.
- 4) June 21, 1994 – Assault, 4<sup>th</sup> Degree, in violation of ORS 163.160.

It is noted that March 1997, Driving Under the Influence of Intoxicants (DUII) charges made against the applicant, in violation of ORS 813.010, were dismissed on February 25, 2000 upon the applicant's successful completion of a DUII Diversion Program, per ORS 813.200.

ORS 163.415 provides in pertinent part that:

- (1) A person commits the crime of sexual abuse in the third degree if the person subjects another person to sexual contact and:
  - (a) The victim does not consent to the sexual contact; or
  - (b) The victim is incapable of consent by reason of being under 18 years of age.

ORS 164.043 provides in pertinent part that:

- (1) A person commits the crime of theft in the third degree if, by means other than extortion, the person:
  - (a) Commits theft as defined in ORS 164.015; and
  - (b) The total value of the property in a single or an aggregate transaction is under \$50.

ORS 164.015 provides in pertinent part that:

- A person commits theft when, with intent to deprive another of property or to appropriate property to the person or to a third person, the person:
- (1) Takes, appropriates, obtains or withholds such property from an owner thereof; or
  - (2) Commits theft of property lost, mislaid or delivered by mistake as provided in ORS 164.065; or
  - (3) Commits theft by extortion as provided in ORS 164.075; or
  - (4) Commits theft by deception as provided in ORS 164.085; or

(5) Commits theft by receiving as provided in ORS 164.095.

ORS 166.065 provides in pertinent part that:

- (1) A person commits the crime of harassment if the person intentionally:
  - (a) Harasses or annoys another person by:
    - (A) Subjecting such other person to offensive physical contact; or
    - (B) Publicly insulting such other person by abusive words or gestures in a manner intended and likely to provoke a violent response;
  - (b) Subjects another to alarm by conveying a false report, known by the conveyor to be false, concerning death or serious physical injury to a person, which report reasonably would be expected to cause alarm; or
  - (c) Subjects another to alarm by conveying a telephonic, electronic or written threat to inflict serious physical injury on that person or to commit a felony involving the person or property of that person or any member of that person's family, which threat reasonably would be expected to cause alarm.

ORS 163.160 provides in pertinent part that:

- (1) A person commits the crime of assault in the fourth degree if the person:
  - (a) Intentionally, knowingly or recklessly causes physical injury to another; or
  - (b) With criminal negligence causes physical injury to another by means of a deadly weapon.

The applicant asserts on appeal, through counsel, that, “[i]t is not clear that his 1992 plea to Theft III is a CIMT as it was pled as part of other charges and does not appear to meet the requisite intent element.” The AAO is unconvinced by counsel's assertion. Counsel provides no other details or evidence to establish his assertion that the applicant's theft conviction does not constitute a crime involving moral turpitude. Moreover, the FBI identification information and the November 8, 1992, Municipal Court of the City of Florence, County of Lane, State of Oregon court disposition, reflect that the applicant plead guilty to Theft III – Class C misdemeanor, and harassment on December 8, 1992.

The AAO finds that the Oregon statutory definitions corresponding to the offenses committed by the applicant constitute “crimes of moral turpitude” for immigration purposes. The ground of inadmissibility exceptions referred to in sections 212(a)(2)(A)(ii) of the Act are thus not relevant to the present matter, as the applicant has committed, and been convicted of more than one crime involving moral turpitude.

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

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

- (1)(B) [I]n 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.

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.

The present record reflects that the applicant married a U.S. citizen on March 29, 2002, and that he and his wife have a U.S. citizen child, born March 5, 2003. The applicant's wife and child are qualifying family members for section 212(h) of the Act extreme hardship purposes. It is noted, however, that the applicant's U.S. citizen child is not a qualifying family member for section 212(a)(9)(B)(v) of the Act waiver of inadmissibility purposes.

Section 212(a)(9)(B)(i) of the Act provides, in pertinent part, that:

[A]ny alien (other than an alien lawfully admitted for permanent residence) who –

....

- (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

The record reflects that the applicant entered the United States without admission on an unknown date in 1985. The applicant remained unlawfully in the United States until August 15, 2003, at which time he was removed. The applicant was unlawfully present in the United States from April 1, 1997, the date of enactment of the inadmissibility provision, until August 15, 2003. He was thus unlawfully present in the United States for more than one year and he is subject to section 212(a)(9)(B)(i)(II) of the Act unlawful presence inadmissibility provisions.

Section 212(a)(9)(B)(v) of the Act provides that:

[T]he Attorney General [now Secretary, Department of Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The applicant's U.S. citizen wife is a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. As previously noted, however, U.S. citizen and lawful permanent resident children are not considered to be qualifying family members for section 212(a)(9)(B)(v) of the Act waiver of inadmissibility purposes. Because the applicant is subject to section 212(a)(9)(B)(ii) of the Act inadmissibility provisions, any hardship claim made with regard to the applicant's child shall not be considered, except to the extent that it directly pertains to hardship experienced by the applicant's wife.

Section 212(a)(9)(B)(v) 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.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. 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 Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

"Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. See *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996.) U.S. court decisions have repeatedly held that the common results of deportation (removal) or exclusion (inadmissibility) are insufficient to prove extreme hardship. See *Perez v. INS*, *supra*. See also, *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991.)

The applicant asserts, through counsel, that his wife will suffer extreme emotional and financial hardship if he is denied admission into the United States. In support of his assertions, the applicant submits letters written by himself and his wife. The applicant also submits his psychological evaluation taken in relation to a U.S. visa application, as well as letters from family members, friends and his employer.

The applicant states in pertinent part in his letter, that he regrets his past actions, that he is the primary income earner in his family, and that his wife and child need his moral and financial support.

The applicant's wife [REDACTED] indicates in a July 5, 2004, letter that she is sad because she misses the applicant, and because their baby does not know his father. [REDACTED] indicates further that she lost her job in February 2004, and that she subsequently moved in with her mother and her mother's husband (who is the applicant's father.)

[REDACTED] states in an August 25, 2005 letter that she feels depressed and has decided to seek counseling regarding her situation. [REDACTED] states that she and the applicant tried to have a child together for seven years before having their baby on March 5, 2003. She states that their young son is now fatherless, and that she had to move to Idaho in order to find work. [REDACTED] states that the applicant's stepson, aged 15, remained in Oregon, and that he also misses the applicant, who is the only father figure he ever knew. [REDACTED] states further that she has no car, and that she has no money or time to visit the applicant in Mexico, and she indicates that the applicant earns very little money in Mexico, and that it is dangerous there.

Undated letters from the applicant's father and stepmother ([REDACTED]'s mother) indicate that they helped the applicant's wife out financially and provided her with a place to live. The letters indicate that the applicant had a good job in the U.S. and that he was able to provide for his family. The letters indicate further that the applicant's new truck will soon be repossessed due to lack of payment.

The record contains a letter from the applicant's stepson stating that he misses the applicant. The record also contains several letters from the applicant's coworkers and friends discussing the applicant's good character and indicating that he had a good job in the U.S., and that his family misses him. The record additionally contains two November 2004, psychological evaluations of the applicant.

Upon review of the totality of the evidence, the AAO finds that the applicant has failed to establish that his wife will suffer extreme hardship if the applicant's waiver of inadmissibility is denied.

The AAO notes that the hardship claims made on appeal lack material detail, and the record lacks corroborative evidence to establish that the applicant's wife would suffer emotional or financial hardship beyond that commonly associated with removal if the applicant were denied admission into the United States. The record contains no evidence to demonstrate that [REDACTED] is unable to work, or to demonstrate that it is necessary for her to work outside of Oregon, or to live away from her eldest son in order to support herself. The record also lacks medical or psychological evidence to corroborate the assertion that [REDACTED] has suffered from, or has been treated for depression or extreme emotional hardship related to the applicant's departure from the United States. In addition, the record lacks evidence to support the assertion that the applicant was the primary earner in his family, or to establish that [REDACTED] will suffer extreme financial hardship if the applicant is denied admission into the United States. Moreover, the AAO notes that, "[t]he mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship." *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981.)

It is noted that the record also lacks any evidence to establish that the applicant's wife would suffer extreme hardship if she moved with the applicant to Mexico. Having found that the applicant failed to establish extreme hardship to a qualifying family member, the AAO finds it unnecessary to determine whether the applicant merits a waiver of inadmissibility as a matter of discretion. The AAO additionally finds that because the applicant has been found to be ineligible for a waiver of his grounds of inadmissibility, approval of his Form I-212 application would serve no purpose.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to meet his burden in the present matter. The appeal will therefore be dismissed, and the application will be denied.

**ORDER:** The appeal is dismissed. The application is denied.