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U.S. Citizenship
and Immigration
Services

[redacted]

FILE: [redacted] Office: CHICAGO, ILLINOIS Date: JUL 23 2004

IN RE: Applicant: [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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Chicago, Illinois, 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 pursuant to 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 (CIMT). The applicant is the beneficiary of an approved petition for alien relative filed by his U.S. citizen spouse. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may remain in the United States and reside with his U.S. citizen spouse and children.

The Interim District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying family member and denied the application accordingly. *See Interim District Director's Decision* dated June 23, 2003.

On appeal, the applicant's counsel asserts that Citizenship and Immigration Services (CIS) misapplied the extreme hardship standard set forth in section 212(h) of the Act, and that Interim District Director erroneously considered the applicant's arrest record and not only his convictions. In addition counsel states that the CIS overlooked the applicant's rehabilitation and did not analyze any favorable factors, although the decision states: "... in the absence of other favorable factors, your waiver must be denied."

Before the AAO can weigh the favorable and unfavorable factors in this case it must first determine if a qualifying family member would suffer extreme hardship if the applicant's waiver application were not approved.

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

> (A)(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 the Secretary of 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 . . . .

The record reflects that the applicant has the following convictions:

March 7, 1996: Circuit Court of Cook County, Illinois. Convicted of Burglary and was sentenced 30 months probation and restitution of $750.00

November 15, 1995: Circuit Court of Cook County, Illinois. Convicted of Theft and was sentenced to one year court supervision.

The applicant is inadmissible to the United States due to his convictions of crimes involving moral turpitude (burglary and theft).

On appeal counsel asserts that the applicant should be eligible for the petty offense exception found in section 212(a)(2)(A)(ii)(II) of the Act, for his November 15, 1995, conviction theft since this conviction was for a misdemeanor and he was sentenced to one year of court supervision.

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

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

. . . .

(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).

[Emphasis added] In the instant case the applicant has been convicted of two CIMT's and thus he is not eligible for the petty offense exception pursuant to section 212(a)(2)(A)(ii)(II) of the Act.

As noted above section 212(h) of the Act provides that a 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 on a qualifying family member. 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 the present case, the applicant must demonstrate extreme hardship to his U.S. citizen spouse, children or parents.

On appeal, counsel states that the applicant is the main source of income to support the family and his spouse requires his support to continue her education. In addition counsel states that the applicant's mother is disabled and depends on him for partial financial support and help in her daily management. In an affidavit previously submitted by the applicant's spouse she states that she would like the applicant to be able to stay in the United States in order to help her raise their children in a better environment. In addiction states that she does not work because she is going to school and if the applicant is removed to Mexico she and her children will miss him a lot because he is a loving and caring person, and a hard working and responsible individual. The record reflects that was employed in the past and nothing was submitted to indicate that she could not be employed again should the applicant be removed to Mexico.

The record of proceedings does not make it clear whether and her children would follow the applicant to Mexico if he were removed. If the applicant is removed to Mexico his U.S. spouse and children would possibly suffer some hardship, but there is no indication that this would impact them at a level commensurate with extreme hardship. If and her children were to accompany the applicant to Mexico, it would be expected that some economic, linguistic and cultural difficulties would arise. No evidence exists that Ms. and her children would not be able to adjust to life in Mexico if they were to relocate with the applicant

A letter submitted from the applicant's mother's doctor show that the applicant's mother is unable to work due to multiple medical problems. No documentary evidence was provided to substantiate the claim that the applicant's mother cannot take care of herself and her daily chores or that there is no one other than the applicant to help her should she need assistance. There is no independent corroboration to show that the current medical condition of the applicant's mother would be jeopardized if the waiver application is denied and the applicant is not permitted to remain in the United States.

U.S. court decisions have repeatedly 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. 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 U.S. citizen spouse, children or parent would suffer extreme hardship if he were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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.