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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: SAN ANTONIO, TX Date: APR 01 2005

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Antonio, Texas, 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)(D)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(D)(ii), for having procured or attempted to procure prostitution. The applicant is the spouse of a naturalized citizen of the United States and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his spouse.

The district director concluded that the application did not warrant exercise of the discretion of the Attorney General [now Secretary of Homeland Security] because the applicant demonstrated a total and profound disregard for the laws of the country in which he seeks legal status. The district director denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated October 11, 2002.

On appeal, counsel contends that the denial of the Form I-601 application is an abuse of discretion as the applicant has been a law abiding citizen since 1998. Counsel contends that the applicant has been rehabilitated and the decision of the district director failed to weigh the positive factors presented by the application. *Form I-290B*, dated October 25, 2002.

In support of this assertion, counsel submits a brief, dated November 15, 2002. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on March 3, 1994, the applicant was arrested and charged with assault. On September 10, 1994, the applicant was arrested and charged with assault and harassment. On January 13, 1995, the applicant was arrested and charged with assault. On September 12, 1998, the applicant was arrested and charged with tampering with a government record. On December 14, 1999, the applicant was convicted and received a sentence of probation for a term of two years in relation to the 1998 arrest. On or about June 25, 1999, the applicant was arrested and charged with prostitution. The applicant was sentenced to six months of community supervision in relation to the 1999 arrest.

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

> (A) Conviction of certain crimes. –
>
> > (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.
> >
> > . . .
>
> (D) Prostitution and commercialized vice. – Any alien who –

(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure ... prostitutes or persons for the purpose of prostitution ... is inadmissible.

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

(h) 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 alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or 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 AAO notes that tampering with a government record is a crime involving moral turpitude. The main determining factor as to the presence of moral turpitude in offenses committed against government authority is the presence of fraud as an element of the offense. *Jordan v. De George*, 341 U.S. 223, *reh'g denied*, 341 U.S. 956 (1951). The applicant is inadmissible under section 212(a)(2)(A)(i)(I) for having committed a crime involving moral turpitude in addition to his grounds of inadmissibility pursuant to section 212(a)(2)(D)(ii) of the Act. The applicant is, therefore, ineligible for consideration under section 212(h)(1)(A) of the Act.

A section 212(h)(1)(B) waiver of the bar to admission resulting from section 212(a)(2) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) of the Act. 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, 565-566 (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.

Counsel focuses his assertions on his contention that the applicant is rehabilitated. Counsel bases this conclusion on the fact that the applicant feels remorseful, acknowledges his mistaken decisions and apologizes for his wrongful conduct. *Brief in Support of Appeal of the Decision of the District Director to Deny a Waiver*, dated November 15, 2002. Counsel offers statements and affidavits from the applicant's probation officer and community supervision officer to support these assertions. Counsel also submits affidavits of the applicant's spouse, employer and co-workers attesting to his solid moral character. The AAO reiterates that a section 212(h)(1)(B) waiver of the bar to admission resulting from section 212(a)(2) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. The record fails to demonstrate that hardship is imposed on the applicant's citizen or lawfully resident spouse and/or child as a result of the applicant's inadmissibility to the United States. Counsel correctly states that the decision of the district director failed to discuss the hardship and other positive factors, if any, presented in the application. The record on appeal, however, fails to establish the threshold level of extreme hardship to the applicant's spouse and/or child required to reach a weighing of the positive and negative factors presented.

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. Moreover, the U.S. Supreme Court 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. The AAO recognizes that the applicant's spouse and child will likely endure hardship as a result of separation from the applicant. However, their situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and/or child 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(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.