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

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 06 2009
[consolidated therein]

IN RE:

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.

Michael Shumway
for

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Pakistan who was found to be inadmissible to the United States under 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 is married to a naturalized United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his United States citizen spouse and three United States citizen sons.

The Director found that the applicant 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. *Director's Decision*, dated September 1, 2006.

On appeal, the applicant, through counsel, asserts that there "will be extreme hardship for [the applicant's] US citizen spouse and three children if he were removed from the US. The District Director erred in denying [the applicant's] Form I-601." *Form I-290B*, filed October 2, 2006.

The record includes, but is not limited to, counsel's brief, affidavits from the applicant and his wife, documents regarding the applicant's son's medical condition, letters of recommendations, and court dispositions for the applicant's convictions. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on September 6, 1996, the applicant was convicted of two counts of Medicaid fraud, and was sentenced to five (5) years probation. On January 16, 1997, the applicant was convicted of grand larceny in the third degree, and was sentenced to five (5) years probation.

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

> (A) *Conviction of certain crimes.*—
>
> > (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…

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

Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—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) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that—

(i)...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 established to the satisfaction of the [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...

(2) the [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

In the present application, the record indicates that the applicant initially entered the United States on May 31, 1987, without inspection. *See Application for Status as a Temporary Resident (Form I-687)*, filed April 4, 1990. On an unknown date, the applicant departed the United States. On December 11, 1993, the applicant reentered the United States on advance parole. On an unknown date, the applicant departed the United States. According to the applicant's Application to Register Permanent Residence or Adjust Status (Form I-485), the applicant entered the United States on April 30, 1994. On September 6, 1996, the applicant was convicted of two counts of Medicaid fraud, and was sentenced to five (5) years probation. On September 30, 1996, the applicant's wife filed a Form I-130 on behalf of the applicant. On the same date, the applicant filed a Form I-485. On January 16, 1997, the applicant was convicted of grand larceny in the third degree, and was sentenced to five (5) years probation. On April 22, 2002, the applicant's Form I-130 was approved. On June 18, 2002, the applicant filed a Form I-601. On September 1, 2006, the Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relatives.

The applicant is seeking a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act. 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 or child 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 United States citizen spouse and children. 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 *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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 AAO finds that the applicant meets the requirements for a waiver of his grounds of inadmissibility under section 212(h)(1)(B) of the Act, in that the applicant's spouse and children would suffer emotional and financial hardship as a result of their separation from the applicant. The applicant states he is "the sole breadwinner for [their] family." *Affidavit from the applicant,* dated September 29, 2006. The applicant's wife states that since the birth of their first child, she has been a housewife. *See affidavit from* [redacted], dated September 29, 2006. The AAO notes that the record establishes that the applicant is the primary source of support for his wife and children. *See U.S Individual Income Tax Returns for 2003, 2004, and 2005*; *see also Wage and Tax Statements (Form W-2) for 2003, 2004, and 2005.*

[redacted] states the applicant's oldest son, [redacted] is

> followed by Mount Sinai Medical Center's division of Hematology/Oncology. He has a blood disorder known as hereditary spherocytosis which was diagnosed at 1 ½ years of age. He was clinically stable until the age of five, when he developed jaundice and splenomegaly (enlarged spleen). He required a total of three blood transfusion[s] from 8/02-1/06. [redacted] was doing well until 4/05 when he developed worsening jaundice and splenic sequestration (filling of blood in the spleen) requiring hospitalization for IV fluids and antibiotics.... In 2/22/06, [redacted] had a laproscopic splenectomy due to increased splenomegaly and anemia. Due to the nature of this surgery, [redacted] is at risk for developing severe infections.

Letter from [redacted], dated September 21, 2006.

[redacted] states the applicant's son is "followed by [their] clinic every 6 months." *Id.* Additionally, the applicant's son has asthma. *See* [redacted]*note*, undated. The applicant's wife states "[d]ue to the nature of [their oldest son's] medical situation, he needs continuous medical treatment as well as extra personal attention at all the times [sic]." *Affidavit from* [redacted], *supra.* Counsel claims that "[d]ue to the nature of serious medical condition, their son, Jamal will not get adequate medical treatment in Pakistan which will derogate his medical condition which may lead to a matter of life and death." *Written statement in support of appeal*, page 2, dated September 27, 2006.

In regards to his criminal activity, the applicant states he "pleaded guilty for some criminal convictions in the past for which [he] [has] regret." *Affidavit from the applicant, supra.* The applicant's wife states the applicant "had completely been changed." *Affidavit from* [redacted] *supra.* The AAO notes that on September 5, 2001, the applicant's probation was terminated. *See letter from* [redacted] dated September 5, 2001. Additionally, regarding the applicant's conviction for grand larceny, [redacted] for the State of New York, states "[their] investigation revealed that [the applicant] was neither the prime mover, nor the principal beneficiary of this crime.... [The applicant] began to cooperate with [her] Office and the Office of the Attorney General of New Jersey in April 1996. His cooperation resulted in the conviction and incarceration of [the true prime mover and principal beneficiary]." *Letter from* [redacted] *Medicaid Fraud Control Unit*, dated February 19, 1997. [redacted] states the applicant is "a completely different person who has imbibed values and has always been ready and willing to serve in the best interest of the American Society." *Letter from* [redacted] dated June 6, 2002.

The AAO notes that the applicant is the primary provider for his wife and children. In *Matter of Recinas*, 23 I&N Dec. 467, 469-70 (BIA 2002), the respondent was "a single mother of six children, four of whom are United States citizens.... The respondent is divorced from the father of her United States citizen children...[and] there is no indication that he remains actively involved in their lives." In *Recinas*, the four United States citizen children were entirely dependent on their single mother for support, which is similar to the applicant's situation in this case, in that his family is financially dependent on him. The BIA held that "the heavy financial and familial burden on the adult respondent, the lack of support from the children's father, the United States citizen children's unfamiliarity with the Spanish language," and other factors, "render the hardship in this case well beyond that which is normally experienced in most cases of removal." *Id.* at 472. The AAO finds that if the applicant were removed from the United States, his wife and children would suffer extreme hardship staying in the United States without their husband/father, the primary wage earner, or joining their husband/father in Pakistan, where he does not have employment. The applicant's wife and children are incapable of maintaining their wellbeing in the absence of the applicant. Additionally, the applicant's wife has strong family ties in the United States. *See written statement in support of appeal*, page 2, *supra.*

The favorable factors presented by the applicant are the extreme hardship to his United States citizen spouse and children, who depend on him for emotional and financial support; the applicant's stable work history in the United States; the applicant's history of paying his federal income taxes; and the lack of any other criminal convictions since his last conviction in 1997. In addition to counsel's statement, affidavits from the applicant, his wife, and a letter from indicate that the applicant has become a law-abiding and responsible husband and father.

The unfavorable factors presented in the application are the applicant's convictions for Medicaid fraud in 1996 and grand larceny in 1997, and any periods of unauthorized presence and employment. The AAO notes that the applicant has not been charged with any crimes since his last conviction and the applicant's crime occurred more than 10 years ago, demonstrating the applicant's rehabilitation.

While the AAO does not condone his actions, the AAO finds that the favorable factors outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the application is approved.