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FILE: [REDACTED] Office: LOS ANGELES

Date: **AUG 08 2006**

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 District Director, Los Angeles, 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 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. 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.

The district director concluded 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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated November 17, 2004.

On appeal, counsel for the applicant contends that the applicant's U.S citizen father and permanent resident mother will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel*, dated January 13, 2005.

The record contains a brief from counsel; statements from the applicant's father; tax and social security records for the applicant's father; tax and social security records for the applicant; a copy of the applicant's birth certificate; a copy of the applicant's father's naturalization certificate; a copy of the applicant's mother's permanent resident card; a 1999 enrollment form for an adult school bearing the applicant's name; a letter from the applicant's friend; letters verifying the applicant's and his father's employment, and; documentation relating to the applicant's criminal history. The entire record was reviewed and considered in rendering this decision.

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 Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) [or] (B) . . . 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 [now the Secretary of Homeland Security (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 was convicted on two occasions under California Penal Code section 647(a) for disorderly conduct (lewd Act,) in 1995 and 1997. The applicant was further convicted under California Penal Code section 67 for bribing an executive officer in 1997. At an interview in connection with his Form I-485, Application to Register Permanent Resident or Adjust Status, the applicant stated that both of his convictions for disorderly conduct were due to the fact that he engaged in sexual conduct in a public restroom. The record reflects that the applicant's conviction for bribing an executive officer was due to the fact that the applicant attempted to bribe the arresting officer when he was arrested for disorderly conduct in 1997. The applicant's conviction for bribery was effectively expunged under California Penal Code section 1203.4. *Order of the Superior Court of the State of California for the County of Los Angeles*, dated August 10, 1999. Based on the foregoing, the applicant was found inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude.

The district director implied that the applicant's convictions for disorderly conduct constitute convictions for crimes involving moral turpitude. However, in order for a crime to involve moral turpitude, it must require a specific intent or "depraved or vicious motive of the alien." *Matter of Mueller*, 11 I&N Dec. 268 (BIA 1965). A conviction for lewd conduct may only constitute a crime involving moral turpitude if the statute under which the conviction occurred requires a specific intent to perform the proscribed behavior. *Id.* at 269. California Penal Code section 647(a) provides the following:

Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

- (a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.

California Penal Code section 647(a) does not require a particular *mens rea* or criminal intent in order to sustain a conviction for the acts covered. Accordingly, the applicant's convictions under California Penal Code section 647(a) do not constitute crimes involving moral turpitude. *See Matter of Mueller*, 11 I&N Dec. at 270.

The AAO has examined whether the applicant's relief (expungement) under California Penal Code section 1203.4 regarding his conviction for bribery has a bearing on whether such conviction continues to be a basis for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. In the Ninth Circuit, in certain narrow circumstances, expungement of a criminal conviction may prevent the conviction from serving as a basis for inadmissibility under U.S. immigration laws. *Lujan-Armendariz v. INS*, 222 F.3d 728 (9th Cir. 2000). However, a state expungement in the Ninth Circuit may only extend to federal immigration law application where the applicant was provided an expungement of a drug conviction pursuant to a law that serves as the state equivalent of the Federal First Offenders Act (FFOA.) *Id.* In the present matter, the applicant has not been convicted of possession of a controlled substance. Further, as the applicant had a conviction prior to his conviction for bribery, the record suggests that section 1203.4 of the California Penal Code is not a form of relief limited to first offenders. Thus, the record does not show that the applicant was afforded relief under a

California provision that is equivalent to the FFOA. Accordingly, the applicant has not asserted or shown that his expungement of his conviction for bribery impacts his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

The AAO notes that section 212(h)(1)(B) 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. Hardship the applicant himself experiences due to his inadmissibility is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen father and permanent resident mother. *Id.* If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (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. These factors included 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.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[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." (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant's parents would possibly remain in the United States if the applicant departs. Separation of family will therefore be carefully considered in the assessment of hardship factors in the present case.

The applicant's father asserts that he and the applicant's mother will experience hardship if the applicant departs the United States. *Statement from Applicant's Father*, dated January 11, 2005. The applicant's father states that he has worked as a laborer, and he plans to retire in one month at age 62. *Id.* He provides that thereafter he will only have income from social security. *Id.* He indicates that the applicant's mother has never worked and she lacks employable skills. *Id.* He contends that he and the applicant's mother will rely on the applicant for economic support. *Id.* He states that the applicant has always been a kind and loving son, and that the applicant assists him and the applicant's mother with domestic chores and transportation. *Id.* The applicant's father previously provided that he and the applicant's mother reside in the same household with the applicant and four of the applicant's siblings. *Statement from Applicant's Father in Support of Form*

I-601, dated October 19, 2001. The applicant's father asserted that the applicant and the applicant's brother were the only ones in the household who work full time. *Id.* He stated that his work as a construction laborer is sporadic, and he misses workdays between projects and due to rain. *Id.*

The record contains copies of 2003 federal tax records that reflect that the applicant earned \$2,788 and the applicant's father earned \$17,214 for the covered period.

On appeal, counsel contends that the applicant's parents will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel*, dated January 13, 2005. Counsel asserts that, should the applicant depart the United States, the applicant's parents will lose their only financial, physical, and emotional support. *Id.* at 5. Counsel states that the applicant's parents will endure significant economic hardship if the applicant departs. *Id.* Counsel provides that the applicant's father will earn only \$608 per month once he retires and draws social security benefits, thus the applicant's parents will fall below the poverty line. *Id.* at 6. Counsel indicates that the applicant's parents have always been close with the applicant, and thus they will endure emotional hardship if they are separated from the applicant. *Id.* at 7.

Upon review, the applicant has failed to show that his parents will suffer extreme hardship should he be prohibited from remaining in the United States. Counsel and the applicant's father focus much of their attention on the financial consequences the applicant's departure would have on the applicant's parents. However, the applicant has not shown that they would endure economic circumstances that rise to the level of extreme hardship. The applicant's father reports that he plans to retire in one month at the age of 62. However, the applicant has no submitted evidence to show that his father is unable to continue working, such as medical records that reflect any physical incapacity. Further, while the applicant's mother has never worked, the record does not support that she is unable to assume employment should she need to supplement their household's income.

The most recent financial information provided by the applicant reflects that the applicant's father earned \$17,214 in 2003, while the applicant earned \$3,325. *2003 IRS Forms 1040 and 1040EZ for the Applicant and the Applicant's Parents*. The applicant has not submitted evidence to show that he presently earns more than his 2003 income. Thus, the record does not establish that the applicant in fact has the capacity to provide economic assistance to his parents, or that his parents depend on him for support. The applicant's father explained that he and the applicant's mother reside with four of their other adult children. He stated that the only members of his household who work full-time are the applicant and one of the applicant's brothers. Yet, the applicant has not provided documentation to show his brother's current income. Nor has the applicant provided evidence that his three adult sisters in the household are unable to work to assist the family. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without adequate documentation, the AAO is unable to fully assess the economic impact the applicant's departure would have on his parents. Presently, the record does not show that the applicant's parents in fact depend on his financial assistance such that they will experience significant hardship if his waiver application is denied.

The applicant's father indicates that he and the applicant's mother are close with the applicant, and that the applicant has been a good son and companion. The AAO acknowledges that family separation is difficult, and

that the applicant's parents will experience emotional hardship if they remain in the United States and the applicant departs. Yet, it is noted that the applicant's parents reside in the same household with four of their other adult children, and thus they will not be left alone without assistance or companionship. Accordingly, the applicant has not established that the emotional consequences of separation for his parents go beyond those which are commonly experienced by the families of individuals deemed inadmissible. U.S. court decisions have 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

It is noted that the applicant's parents may relocate to Mexico with the applicant if they choose. As natives of Mexico, it is evident that they would not be faced with the challenges of adapting to an unfamiliar language or culture. However, as a U.S. citizen and permanent resident, the applicant's parents are not required to reside outside the United States as a result of the applicant's inadmissibility. As discussed above, the applicant has not shown that remaining in the United States presents extreme hardship for his parents.

All instances of hardship for the applicant's parents have been considered separately and in aggregate. Based on the foregoing, the applicant has not shown that, should he be prohibited from remaining in the United States, his parents will suffer emotional hardship that is unusual or beyond that which would normally be expected upon deportation. The applicant has not established that his parents are unable to provide for their economic needs without the applicant's assistance. Thus, the documentation in the record fails to establish the existence of extreme hardship to the applicant's parents 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.