

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

H2

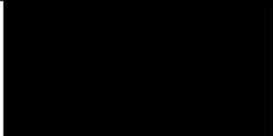


FILE:

Office: CHICAGO, IL

Date: JUN 06 2006

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:



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 waiver application was denied by the District Director, Chicago, IL. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico. The applicant 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 record indicates that the applicant is married to a U.S. citizen and has four U.S. citizen children. The applicant seeks a waiver of inadmissibility in order to reside with his wife and children in the United States.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and children. The application was denied accordingly. *See District Director Decision*, dated March 6, 2004.

On appeal, counsel asserts that the director did not consider the applicant's complete rehabilitation and the extreme hardship his wife and children will suffer as a result of his deportation. *Counsel's Brief*, undated.

The record includes but is not limited to: a letter from the applicant; the birth certificates for the applicant's wife and four children; a monthly budget and monthly billing statements; a letter from the applicant's spouse; letters from the applicant's children; photographs of the family; a letter from the applicant's nephew; letters from members of the community attesting to the applicant's rehabilitation; and a medical document regarding the applicant's electrocution injury. The entire record was reviewed in adjudicating this application.

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

(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) states in pertinent part that:

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-

(1)(A) [I]t is established to the satisfaction of the Attorney General that-

(i) [T]he 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 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 indicates that the applicant was convicted of attempted armed robbery on April 6, 1994. The actions leading up to this conviction occurred less than 15 years from the present time. The applicant is therefore statutorily ineligible for a waiver pursuant to section 212(h)(1)(A) of the Act. He is however, eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(B) of the Act.

A section 212(h)(B) 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. Hardship the alien himself experiences due to separation is irrelevant to section 212(h)(B) waiver proceedings unless it causes hardship to the applicant's 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).

The AAO notes that extreme hardship to the applicant's spouse and children must be established in the event that they reside in Mexico or in the event that they reside in the United States, as they are not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse and children in the event that they reside in Mexico. The applicant's spouse asserts that she and her children would suffer extreme hardship as a result of relocating to Mexico because their entire family resides in the United States and her children do not speak Spanish. The AAO finds that the applicant's children would suffer extreme hardship as a result of relocating to Mexico. Relocation to Mexico could have a severe impact on the children's education and ability to prosper because they do not know the Spanish language. In *Matter of Kao*, 23 I&N Dec. 45 (BIA 2001), the Board of Immigration Appeals found that adolescents would suffer extreme hardship as a result of relocating to a country where they do not know the culture or the language. Thus, the record does reflect that relocation to Mexico will result in extreme hardship to the applicant's children.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse and children remain in the United States. The applicant's spouse asserts that she and her four children will suffer extreme emotional and financial hardship if the applicant is removed from the United States. The applicant's spouse states that she and the applicant have been together for 14 years and have raised their four children in the same house for the children's entire lives. She states that both her and the applicant contribute to the household income. The applicant's spouse makes approximately \$37,000 a year and the family's expenses are approximately \$4,200 a month. The applicant's spouse states that she will not be able to pay for the family's monthly expenses, including their monthly mortgage payment without the applicant's income. She fears that the children will suffer extreme hardship as a result of this loss of income as well as the emotional support of the applicant. The applicant's spouse also states that she fears for the well-being of the applicant in Mexico and he will be unable to help the family financially while residing there. The applicant suffered an electrical accident on August 25, 2002 and continues to have lingering problems like memory

lapses and cognitive delays in tracking the sequences of events. The applicant's spouse states that he will not be able to find work in Mexico. The AAO notes that the applicant submitted no evidence to establish the emotional effects his removal would have on his family that go beyond what all families experience upon removal. The AAO also finds that extreme hardship cannot be established for financial reasons alone. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). Therefore, a thorough review of the entire record reflects that separation will not result in extreme hardship to the applicant's spouse and children.

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 BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> 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 (9<sup>th</sup> 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 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 does not establish the existence of extreme hardship to the applicant's spouse and children 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(a)(9)(B) 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.