

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

H2

FILE:

Office: LOS ANGELES, CA Date: JUN 20 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:

SELF-REPRESENTED

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, Los Angeles, California. 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 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 crimes involving moral turpitude. The record indicates that the applicant is married to a U.S. citizen and that he is the beneficiary of an approved petition for an alien relative. The applicant seeks a waiver of inadmissibility in order to reside with his wife and four children in the United States.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. *See District Director Decision*, dated August 13, 2004.

The AAO notes that the district director erred by adjudicating the applicant's case under the waiver application section associated with fraud and not the waiver application section associated with crimes involving moral turpitude. The director adjudicated the application under section 212(i) of the Act and not the appropriate section 212(h) of the Act. The director did not take into account the possible hardships suffered by the applicant's four children as required under section 212(h). This decision will consider both the hardship suffered by the applicant's spouse and the applicant's children.

On appeal, the applicant submits new evidence to establish that his wife and four children would suffer extreme hardship as a result of his inadmissibility. *Form I-290B*, dated September 11, 2004.

The record in this case includes but is not limited to: a declaration from the applicant's spouse; a declaration from the applicant; birth certificates for the applicant's four U.S. citizen children; the rental agreement for the applicant and his spouse; copies of the applicant's family bills; family photographs; and various letters from members of the community attesting to the applicant's rehabilitation.

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 two offenses (grand theft auto and burglary). The actions leading up to these convictions occurred on February 16, 1993 and March 23, 1993. These actions occurred less than 15 years from the present date. 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) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A) 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) waiver proceedings unless it causes hardship to the applicant's spouse and/or 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 or 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 of 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/or children in the event that they reside in Mexico. The applicant's spouse asserts that she and her children would face extreme hardship as a result of relocating to Mexico because they would be separated from her family; she cannot read Spanish; the four children are not fluent in Spanish; she would find it hard to find a job; and her daughter Jasmine suffers from a sensitive immune system requiring her to take antibiotics. *Spouse's Statement*, dated, September 11, 2004. The AAO notes that no documentation was submitted to support her asserts regarding her daughter's health problems and the ability to obtain treatment for her problem in Mexico. However, The AAO finds that the applicant's children would suffer extreme hardship as a result of relocating to Mexico. Relocation to Mexico would have a severe impact on the children's education and ability to prosper because they are not fluent in 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.

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 states that she and the children will suffer emotionally and financially if her husband is removed from the United States. She states that she and the applicant have been together since they were teenagers and at age 16 she gave birth to their first child. She states that the applicant is an active part of their children's lives. The applicant is their primary contact at

school, he supervises their homework, meets with teachers, and volunteers with their soccer league. The applicant's spouse asserts that if the applicant is forced to leave the United States she will suffer a nervous breakdown and fall into depression. She is concerned that their children's interests in school, sports and religion will disappear. The AAO notes that the applicant submitted no independent evaluation regarding the emotional status of his wife and/or children to show that the emotional hardship they would suffer is beyond what all families experience as a result of removal and separation.

In addition, the applicant's spouse states that she and her children will suffer financially as the applicant's income is the only income contributing to their family expenses. The applicant is a construction worker and earns \$16.00 per hour. The applicant's spouse stays at home and takes care of the children. The record indicates that the applicant's spouse worked in 2001 and made \$22,000 that year. The applicant submitted no evidence to establish that his wife could not work to support her family. Similarly, no evidence was submitted to establish that the spouse's family, including her mother, father, brother, and uncle, whom all live in Los Angeles, could not help her after the applicant's removal. The AAO recognizes that the applicant's spouse and children will endure hardship as a result of separation from the applicant. However, their situation, if they remain in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

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.

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 fails to establish the existence of extreme hardship to the applicant's family 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. 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.