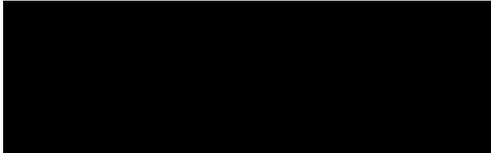




U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

H2



FILE:



Office: LOS ANGELES, CA

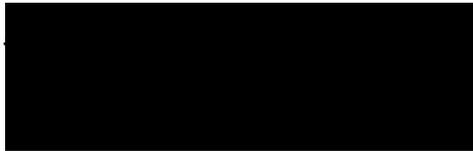
Date: MAY 16 2006

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.

A handwritten signature in cursive script, 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, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of México who entered the United States without inspection in 1987. 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 crimes involving moral turpitude. The record indicates that the applicant is married to a U.S. citizen and has three 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 based on the evidence in the record, 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 October 21, 2004.

The record includes but is not limited to: a declaration from the applicant's spouse, the spouse's naturalization certificate, a copy of the applicant's marriage certificate, copies of the birth certificates for the applicant's three children, a psychological evaluation for the applicant's spouse and children, a medical record for the applicant's spouse, school progress reports for two of the applicant's children, a letter of recommendation, copies of two mortgage statements, copies of W-2 forms from 2003, health insurance cards for the applicant's children, and photographs of the family.

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 seven crimes involving moral turpitude. The applicant was convicted of possession of burglary tools on May 13, 1993; receiving stolen property, vehicle theft, and second degree burglary on August 10, 1993; and receiving stolen property, vehicle theft, and burglary on June 15, 1994. The actions leading up to these convictions 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 will suffer extreme hardship as a result of relocating to Mexico because she will not be able to obtain the proper medical care for her Type II diabetes in Mexico. She also states that she has lived in the United States since she was four years old, her entire family lives in the United States and she nor the children read or write 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 reflects 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 will suffer extreme physical, emotional and financial hardship if the applicant is removed from the United States. The applicant's spouse states that she has been suffering from Type II diabetes for the past six years and submits a letter from her nurse practitioner to support her statement. She states that her disease is often out of control and she needs insulin. She also states that she recently began experiencing chronic shoulder pain. In addition, to her physical health the applicant's spouse states that she and the children are suffering emotionally. The record includes a

detailed psychological evaluation by Adriana Camargo stating that she interviewed the applicant and her children on November 6, 2004. The applicant's spouse also states that she was physically and sexually abused as a child and her husband is the source of her strength and stability; they have been together since she was 15 years old. The psychological evaluation indicates that the applicant's spouse has problems with depression and anxiety. The AAO notes that given the spouse's childhood background it is entirely possible that the loss of her husband could have a devastating effect. Lastly, the applicant's spouse states that she will suffer financially as a result of the applicant's removal from the United States. The record includes copies of two mortgage statements from the house the applicant and his spouse had purchased. The AAO finds that the spouse's physical, emotional and financial hardships taken in the aggregate amount to extreme hardship. Therefore, a thorough review of the entire record reflects that separation will 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.*

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).

A review of the documentation in the record establishes the existence of extreme hardship to the applicant's spouse and children caused by the applicant's inadmissibility to the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to

the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant's seven criminal convictions. The favorable factors in the present case are the extreme hardship to the applicant's three children and wife; the lack of a criminal record or offense since 1994 and a letter of recommendation attesting to the applicant's good moral character from a family friend.

The AAO finds that the crimes committed by the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

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 met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.