



U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE:

[REDACTED]

Office: LOS ANGELES, CALIFORNIA

Date:

SEP 20 2006

IN RE:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under § 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

PHOTOCOPY

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 entered the United States without inspection in February 1991. The applicant was found to be inadmissible to the United States pursuant to § 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 is married to a U.S. citizen and is the beneficiary of an approved petition for alien relative. 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. On appeal, counsel contends that the applicant submitted sufficient evidence to qualify for a waiver of inadmissibility. Counsel also makes several assertions regarding the underlying convictions for which the applicant was found inadmissible. Counsel requested 60 days in which to submit additional evidence in support of the appeal; however, on June 12, 2006, in response to an inquiry from the AAO, counsel indicated that he did not file a brief. The record is thus complete.

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.

On May 13, 1994, the applicant committed the crime of burglary in violation of California Penal Code (CPC) § 459, for which he was convicted on June 10, 1994. The applicant was sentenced to three years of probation, with the first eight months to be served in the county jail. On August 28, 1994, while in jail, the applicant committed a dangerous weapons offense in violation of CPC § 12020(A) for which he was convicted on February 21, 1995 and was sentenced to three years of probation, including 60 days in the county jail. The applicant committed these crimes involving moral turpitude less than 15 years prior to his application for adjustment of status. The applicant is therefore statutorily ineligible for a waiver pursuant to § 212(h)(1)(A) of the Act. He is, however, eligible to apply for a waiver of inadmissibility pursuant to § 212(h)(B) of the Act.

On appeal, counsel points out that the applicant was not sentenced to two years in state prison for the burglary conviction, as the district director states in his decision to deny the waiver. Although the district director incorrectly described the sentence imposed, the crime of burglary is nevertheless one involving moral turpitude. Counsel also asserts that the applicant was never convicted of possession of a firearm in violation of CPC § 12020(A). The record, however, includes Los Angeles County Superior Court records establishing the applicant's conviction based on his own plea of nolo contendere to the second of two counts involving a dangerous weapons violation in jail. Counsel submits no documents in support of his contention to the contrary; thus, the AAO concludes that the applicant was convicted of the above weapons offense, a crime involving moral turpitude.

Counsel further asserts that the violation of California Vehicle Code (CVC) § 10852, which the applicant committed on February 6, 1992, constitutes a regulatory offense rather than a crime involving moral turpitude. The CVC section at issue deems it a misdemeanor to wilfully injure or tamper with any vehicle or its contents or to break or remove any part of a vehicle without the consent of the owner. Counsel fails to provide any authority as the basis of his contention that the willful injury, tampering, or breaking of a vehicle or its contents is not a crime involving moral turpitude; therefore, he has not overcome the district director's determination in this regard.

Finally, counsel states that the applicant provided supplemental evidence establishing the requisite level of hardship to qualify for a waiver of inadmissibility pursuant to § 212(h) of the Act. The AAO disagrees. 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 (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. Moreover, the U.S. Supreme Court 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.

The record includes documentation such as employment letters, tax records, birth certificates, and immigration records. Neither counsel nor the applicant, however, has provided any description or evidence regarding the specific nature of the hardship the applicant’s inadmissibility would cause his U.S. citizen wife and three children. The totality of the documentation in the record does not establish that the applicant’s U.S. citizen spouse and children would suffer hardship that was unusual or beyond that which would normally be expected upon removal. The AAO therefore finds the applicant to be statutorily ineligible for relief, and no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 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.