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H12

FILE: [REDACTED] Office: CHICAGO, ILLINOIS Date: APR 23 2007

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:
[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

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under 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 United States citizen spouse, and he seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his United States citizen wife and four United States citizen children.

The District Director found “[t]here were no claims of extreme hardship from [the applicant’s] United States citizen spouse” and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director’s Decision*, dated May 20, 2005.

On appeal, the applicant, through counsel, asserts that refusing the applicant admission to the United States “would result in extreme hardship to his United States citizen spouse and children.” *Form I-290B*, filed June 21, 2005.

The record includes, but is not limited to, counsel’s brief, a statement by the applicant’s wife, the final court disposition for the applicant’s burglary conviction, letters of support from the applicant’s friends, family, and co-workers, and numerous photos of the applicant and his family. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on April 21, 1998, the applicant was convicted of one charge of burglary and was sentenced to two (2) years probation.

Section 212(a) of the Act provides, in pertinent part, that:

(A) *Conviction of certain crimes.*—

- (i) In general.—Except as provided in clause (ii), any 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...

Section 212(h) of the Act provides, in pertinent part, that:

- (h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in his discretion, waive the application of subparagraphs (A)(i)(I)...of subsection (a)(2) if—

(1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that—

(i)...the 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 established to the satisfaction of the [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...

(2) the [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

In the present application, the record indicates that on June 19, 1994, the applicant was arrested by the Kankakee, Illinois Police Department for burglary. On April 21, 1998, a Kankakee County Circuit Court judge convicted the applicant of burglary and sentenced him to two (2) years probation. On February 14, 2000, the applicant married [REDACTED] a United States citizen. On September 14, 2000, the applicant's daughter [REDACTED] was born in Chicago, Illinois. On April 4, 2001, the applicant filed a Petition for Alien Relative (Form I-130) and an Application to Register Permanent Residence or Adjust Status (Form I-485). On September 10, 2001, the applicant's son, Francisco, was born in Chicago, Illinois. On June 3, 2003, the applicant filed a Form I-601. On July 10, 2003, the applicant's daughter, [REDACTED] was born in Chicago, Illinois. On February 26, 2005, the applicant's daughter, [REDACTED], was born in Chicago, Illinois. On May 20, 2005, the District Director denied the Form I-485 and I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relatives.

The applicant is seeking a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act. A waiver under section 212(h) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent or child of the applicant. Hardship the alien himself experiences upon removal is irrelevant to section 212(h) waiver proceedings; the

only relevant hardship in the present case is hardship suffered by the applicant's United States citizen 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).

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 AAO finds that the applicant meets the requirements for a waiver of his grounds of inadmissibility under section 212(h)(1)(B) of the Act, in that the applicant's spouse and children would suffer emotional and financial hardship as a result of their separation from the applicant. Counsel contends that the applicant is the "primary source of support" for his wife and children. *Brief in Support of I-290B*, page 1, filed July 26, 2005. The applicant's wife states "in May 2003, [she] had to stop working because of complications with the pregnancy. From that point on [the applicant] has been the sole support of [their] family." *Letter from* [REDACTED] page 5, filed July 26, 2005. The applicant's wife states the family's monthly expenses total \$3,473.40 to \$3,573.40. Counsel states the applicant "shops for food, takes the children to and from school and is the primary wage earner in [the] family." *Brief in Support of I-290B*, page 1, *supra*; see also *Letter from* [REDACTED], page 5, *supra*. The AAO notes that the applicant is employed full-time as a carpenter. [REDACTED], the President of Pelar Construction, Inc., the applicant's employer, states the applicant "has worked his way up from a laborer when he started to one of [their] key employees...[the applicant] now runs jobs and oversees some of [their] largest projects." *Letter from* [REDACTED] *President of Pelar Construction, Inc.*, dated June 9, 2005. Counsel states the applicant's wife "is morbidly obese with many health problems, specifically but not limited to, breathing and mobility problems." *Brief in Support of I-290B*, page 1, *supra*. The applicant's wife states "[w]ith the birth of [their] last child (four children in five years) [her] weight ballooned to 400 lbs." *Letter from* [REDACTED] [REDACTED], page 5, *supra*. "With four small children and [the applicant's wife's] inability to walk or stand for more than five minutes at a time she has many limitations...Some days she even needs [the applicant] to help her bathe. Getting in and out of the tub is a struggle." *Brief in Support of I-290B*, page 2, *supra*. The AAO notes that no medical documentation was submitted establishing the applicant's wife's medical problems; however, the applicant's wife states they "have no health insurance mainly because of [her] - [her] weight and other health issues prevented [them] from getting coverage." *Letter from* [REDACTED] [REDACTED], page 5, *supra*. Counsel states the applicant's children do not speak Spanish and moving to Mexico would "cause the children to lose a very promising future." *Brief in Support of I-290B*, page 2, *supra*. The AAO notes that the applicant submitted documentation to demonstrate how his school-age children have adjusted to the school system and their lives in the United States. The applicant and his wife are trying to save for their children's college educations and "feel that a higher education will free their

children from the struggles of inner city life.” *Id.* at 1. If the applicant were removed from the United States, “he could only work for [the family’s] survival,” not to save for his family’s future and children’s education. *Id.* at 2. The applicant’s wife states if the applicant is removed from the United States, “[their] joining him there would depend on his ability to secure employment...[they] could live with his family, while he looked for work, but only for a short time. They could not support [the applicant or his family] for any period of time.” *Letter from [REDACTED]*, page 7, *supra*. In regards to his criminal activity, counsel states the applicant has been “rehabilitated.” *Brief in Support of I-290B*, page 2, *supra*. The applicant’s wife states the applicant committed his crime at the age of 25 years old and “from one (1) mistake – [the applicant] turned his life around. His first step was to seek help, which led him to join [Alcoholic’s Anonymous].” *Letter from [REDACTED]* page 1, *supra*. The AAO notes that the applicant has been in Alcoholic’s Anonymous for nine years, which is commendable.

The AAO notes that the applicant is the sole provider for his wife and children. In *Matter of Recinas*, 23 I&N Dec. 467, 469 (BIA 2002), the respondent was “a single mother of six children, four of whom are United States citizens.” The respondent’s four United States citizen children were entirely dependent on their mother for support, which is similar to the applicant’s situation in this case, in that his family is entirely dependent on him. The BIA held that “the heavy financial and familial burden on the adult respondent, the lack of support from the children’s father, the United States citizen children’s unfamiliarity with the Spanish language,” and other factors, “render the hardship in this case well beyond that which is normally experienced in most cases of removal.” *Id.* at 472. The AAO finds that if the applicant were removed from the United States, his wife and children would suffer extreme hardship staying in the United States without their father, the primary wage earner, or joining their father in Mexico, where he does not have employment. The applicant’s wife and children are incapable of maintaining their well being in the absence of the applicant. Additionally, the applicant’s wife has no family ties in Mexico and is currently unable to work.

The favorable factors presented by the applicant are the extreme hardship to his United States citizen spouse and children, who solely depend on him for emotional and financial support, and the lack of any other criminal convictions since his last conviction in 1998. In addition to counsel’s brief, several declarations from friends, co-workers, members of Alcoholic’s Anonymous, and his wife indicate that the applicant has become a law-abiding and responsible husband and father. The record of proceedings does not establish that the admission of the applicant to the United States would be “contrary to the national welfare, safety, or security of the United States.”

The unfavorable factors presented in the application are the applicant’s conviction for burglary in 1998 and periods of unauthorized presence and employment. The AAO notes that the applicant has not been charged with any crimes since his last conviction and the applicant’s crime occurred more than 12 years ago, demonstrating the applicant’s rehabilitation.

While the AAO does not condone his actions, the AAO finds that the favorable factors outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary’s discretion is warranted in this matter.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the application is approved.