



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: LOS ANGELES, CALIFORNIA

Date: FEB 22 2007

IN RE:

[REDACTED]

PETITION: 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 PETITIONER:

[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, Los Angeles, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 applicant is the spouse of a U.S. citizen and the father of a U.S. citizen child. He now seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his spouse and child.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated April 28, 2005.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of law in finding that the applicant failed to meet the burden of establishing extreme hardship to his qualifying relative necessary for a waiver under 212(h) of the Act. Counsel also asserts that the applicant is not inadmissible, for he only has only been convicted of one crime involving moral turpitude that falls under the petty offense exception. *Form I-290B; Attorney's brief*.

In support of his assertions, counsel submits a brief. The record also includes, but is not limited to, a letter from [REDACTED] M.D., Diplomate, American Board of Orthopedic Surgery, dated February 18, 2005; statements from the applicant's spouse, dated February 14, 2005 and June 11, 2005; employment letters for the applicant's spouse; tax statements for the applicant and his spouse; earnings statements for the applicant and his spouse; criminal records and court dispositions for the applicant; a bank statement for the applicant and his spouse; and a psychological evaluation from [REDACTED] Ph.D., Centro de Desarrollo Personal, dated June 11, 2005. The entire record was considered in rendering a decision on the appeal.

The applicant has the following criminal history. On March 17, 1997 the applicant was convicted under section 537e(a)(2) of the California Penal Code for possession of property valued over \$400 with an altered identification. *Court record, Municipal Court of Los Angeles, Metro Branch Judicial District, County of Los Angeles, State of California*. He received a sentence of 24 months probation which he violated, resulting in a sentence of 24 days in the county jail. *Id.* On October 1, 1997 the applicant was convicted under section 496(a) of the California Penal Code for receiving/concealing stolen property. *Court record, Municipal Court of Compton Judicial District, County of Los Angeles, State of California*. He received a sentence of 12 months probation and 20 days in the county jail. *Id.* On August 24, 1998 the applicant was convicted under section 148.9(a) of the California Penal Code for falsely representing himself to an officer. *Court record, Municipal Court of Southeast - H.P. Judicial District, County of Los Angeles, State of California*. He received a sentence of two years probation which was revoked on February 1, 1999 for failure to make fine payments. *Id.* As a result, the applicant was sentenced to five days in the county jail. *Id.* The AAO notes that the record includes information on additional arrests where the charges were dismissed.

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

(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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

(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 [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 . . .

Prior to addressing whether the applicant qualifies for the Form I-601 waiver, the AAO finds it necessary to address the issue of inadmissibility. Counsel asserts that the applicant's convictions under section 496(a) and 148.9(a) of the California Penal Code do not constitute crimes involving moral turpitude. *Attorney's brief.* He further states that the applicant's conviction under section 537(e)(a)(2) is the only conviction that constitutes a crime involving moral turpitude, and that this conviction falls under the petty offense exception as the applicant received 24 days in jail and the maximum possible sentence was not over one year. *Id.* The AAO finds that counsel has erred in his analysis. Counsel states that the applicant was convicted under section 496(a) of the California Penal Code for being a junk dealer with railroad/utility/telegraph equipment, and further asserts that there is no knowledge element under this section of the statute, and thus it is not a crime involving moral turpitude. *Attorney's brief.* The AAO finds that counsel has misread the statute. While counsel is correct in stating that the applicant was convicted under section 496(a) of the California Penal Code, section 496(a) refers to the receipt of stolen property while Section 496a(a) refers to junk dealers using railroad/utility/telegraph equipment. *See California Penal Code sections 496(a) and 496a(a).* Section 496(a) requires that the offending party have knowledge that the property is stolen. *California Penal Code section 496(a).* A conviction under this section constitutes a crime involving moral turpitude, as knowledge is an element of the crime. *See Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992). The AAO concurs with counsel in finding that the applicant's conviction under section 537(e)(a)(2) is also a crime involving moral turpitude. As the petty offense exception can only be used on one conviction and the applicant has more than one conviction for crimes involving moral turpitude, he is thus inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

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 lawful permanent resident or United States citizen family ties to 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 notes that extreme hardship to the applicant's spouse or child must be established in the event that either individual resides in Mexico or the United States, as neither person is 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.

If the applicant's spouse travels with the applicant to Mexico, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States and although her parents were born in Mexico, they now live in the United States. *See U.S. birth certificate for the applicant's spouse; See Also Form G-325A for the applicant's spouse.* Although the record fails to address what, if any, family ties the applicant's spouse has in Mexico, the AAO notes that the applicant's spouse speaks Spanish. *Statement from the applicant's spouse*, dated February 14, 2005. According to the applicant's spouse, a few years ago the applicant suffered a work-related accident in which he fell 20 feet and injured his back. *Statement from the applicant's spouse*, dated June 11, 2005. A medical letter confirms that the applicant suffers from a cervical strain, herniated nucleus pulposus L5-S1, compression fracture, and left shoulder injury and that he has been receiving treatment since June 3, 2002. *Letter from [REDACTED] M.D., Diplomate, American Board of Orthopedic Surgery*, dated February 18, 2005. The applicant continues to participate in physical therapy and needs ongoing treatment. *Id.* Due to his accident, the applicant is unable to work and receives worker's compensation. *Statement from the applicant's spouse*, dated February 14, 2005. The applicant's spouse has become the primary source of income for their family. *Id.* Although the applicant's spouse stated that as of February 2005 she had become unemployed and the applicant's worker's compensation was their only income, a declaration she wrote in June 2005 stated that she was working and continuing to go to school. *Statements from the applicant's spouse*, dated February 14, 2005 and June 11, 2005. While the AAO acknowledges the strains of having a family dependent upon one primary income, it does not find that the record demonstrates that the applicant's spouse would be unable to sustain herself and contribute to her family's financial well-being in Mexico. Furthermore, the record fails to address whether the applicant would continue to receive his worker's compensation. According to the applicant's spouse and her psychologist, the applicant's spouse has suffered from ovarian cysts since 1999, stress, and scoliosis. *Psychological Evaluation from [REDACTED], Ph.D., Centro de Desarrollo Personal*, dated June 11, 2005; *Statement from the applicant's spouse*, dated June 11, 2005. The AAO notes there are no medical records to confirm the applicant's spouse's physical health conditions, nor is there any documentation as to what type of treatment, if any, she is receiving. Additionally, the record fails to demonstrate that proper medical care would be unavailable to the applicant's spouse or the applicant in Mexico. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in Mexico.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As noted previously, the applicant's parents reside in the United States. *Form G-325A for the applicant's spouse.* There is nothing in the record stating that the applicant has been physically dependent upon his spouse since his accident, or that there would be an added expense of hiring someone to

take care of him if the applicant were separated from his spouse. As the applicant's spouse is the primary source of income for herself and the applicant, the record does not demonstrate that the applicant's spouse would be unable to continue to financially support the applicant while he resides in Mexico and she in the United States. The applicant's spouse states that if the applicant is returned to Mexico, he would not receive the medical attention he needs for his back, a situation that would impose a severe emotional hardship on her. *Statement from the applicant's spouse*, dated February 14, 2005; *Psychological Evaluation from [REDACTED] Ph.D., Centro de Desarrollo Personal*, dated June 11, 2005. The applicant's spouse stated that she and her husband are very close and depend upon one another for emotional and moral support. *Statement from the applicant's spouse*, dated June 11, 2005. The applicant's spouse is under tremendous stress and cannot stop thinking about her life and what will happen to the applicant if they have to separate from one another. *Id.* According to a psychological evaluation, the applicant's spouse meets diagnostic criteria for depressive disorders, anxiety disorders, somatic problems, and Attention Deficit/Hyperactivity Disorders. *Psychological Evaluation from [REDACTED] z, Ph.D., Centro de Desarrollo Personal*, dated June 11, 2005. To be separated from the applicant would create significant stress and anxiety for the applicant's spouse, as well as the possible exacerbation of her health conditions and emotional state. *Id.* Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on two interviews occurring several days apart. The record fails to reflect an ongoing relationship between the mental health professional and the applicant's spouse or any history of treatment for the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on two interviews several days apart, do not reflect the insight and detailed analysis commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

U.S. court decisions have repeatedly 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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical of individuals separated as a result of removal and does not rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in the United States.

The AAO notes that the District Director erred in finding that that applicant's child could not be a qualifying relative. *Decision of the District Director*, dated April 28, 2005. As the applicant is inadmissible for crimes involving moral turpitude, his U.S. citizen child may be a qualifying relative for purposes of a waiver under section 212(h) of the Act. The applicant's spouse states that she does not know what the applicant's daughter would do if her father were removed from the United States. *Statement from the applicant's spouse*, dated February 14, 2005. The AAO observed, however, that the record fails to address what type of hardship, if any, the applicant's U.S. citizen child would suffer if she resided with him in Mexico or remained in the

United States. The applicant's child lives at a different address than the applicant. *Form I-601*. According to the applicant's spouse, the applicant sees his child every weekend. *Statement from the applicant's spouse*, dated February 14, 2005. At times, the applicant's spouse has had to translate for the applicant and his child so that they could communicate, as the applicant only speaks Spanish and his child only speaks English. *Id.* When looking at the aforementioned factors and taking into account that the applicant has offered no evidence of hardship as it relates to his daughter, the AAO does not find that the applicant has demonstrated that she would suffer extreme hardship if she were to reside in Mexico or 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)(2)(A)(i)(I) 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.