

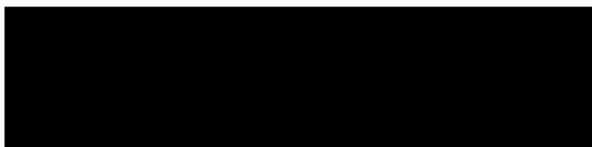
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U.S. Department of Homeland Security
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**U.S. Citizenship
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Services**

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FILE:



Office: SAN FRANCISCO, CA

JUN 21 2007
Date:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, 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 a crime involving moral turpitude. The record indicates that the applicant is the son of a lawful permanent resident. The applicant seeks a waiver of inadmissibility in order to reside with his mother in the United States.

The district director found that the hardships to the applicant's mother as a result of his inadmissibility did not reach the level of extreme hardship. *District Director Decision*, dated September 24, 2004.

On appeal, the applicant asserts that he is innocent of the charges against him and that he provides financial and emotional support to his mother. *Attachment to Form I-290B*, dated October 20, 2004.

The record indicates that on January 8, 2003 the applicant was convicted of Shooting at an Occupied Dwelling, in violation of section 246 of the California Penal Code. He was sentenced to one-year imprisonment.

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 actions leading up to the applicant's conviction for shooting at an occupied dwelling occurred on October 12, 2001, 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)(1)(B) of the Act.

A section 212(h)(1)(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 the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien experiences due to separation is not considered in section 212(h)(B) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent. 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 mother must be established in the event that she resides in Mexico or in the event that she resides in the United States, as she is 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 mother in the event that she resides in Mexico. The applicant's mother states in her affidavit that the applicant came to the United States when he was four years old and barely speaks Spanish. She also contends that she and the applicant do not have any relatives in Mexico. *Mother's Affidavit*, dated September 30, 2002. The AAO notes that, as stated above, hardship the alien himself experiences due to separation is not considered in section 212(h)(B) waiver proceedings unless it causes hardship to the applicant's mother. No other assertions were made in regards to the applicant's mother's ability to relocate to Mexico and the hardship she may face in doing so. Thus, the record does not reflect that relocation to Mexico will result in extreme hardship to the applicant's mother.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his mother remains in the United States. The applicant's mother states that the applicant is very caring and helps to support her and his father. She also states that he takes her to the hospital for all of her doctor's appointments. *Mother's Affidavit*, dated September 30, 2002. The applicant states that he is the only person who lives with his mother and that he gives her emotional and financial support. *Applicant's Statement*, dated October 20, 2004. The applicant states that he takes his mother to all of her medical appointments and that she suffers from osteoporosis, high blood pressure and diabetes. *Id.* The AAO notes that no medical records have been submitted to establish the health concerns of the applicant's mother or that she requires the applicant's care to maintain her well-being. Furthermore, although the applicant asserts that he is the only person who lives with his mother and provides her with support, the statement made by the applicant's mother indicates that there are other family members who might be able to assist her – the applicant's father and siblings. *Mother's Affidavit*, dated September 30, 2002. The record does not show that the applicant's father and/or his siblings would be unable or unwilling to support the applicant's mother economically and or take her to her

medical appointments in the applicant's absence. The record also fails to offer evidence of the financial support that the applicant contends he provides his mother. Therefore, the current record does not demonstrate that separation from the applicant would result in extreme hardship to the applicant's mother.

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).

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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's mother caused by the applicant's inadmissibility to the United States. The AAO notes that the applicant and his mother devoted much of their statements to the applicant's rehabilitation and innocence. However, issues such as an applicant's rehabilitation are considered in the discretionary phase of 212(h) proceedings and only when an applicant has first been found statutorily eligible for a waiver of admissibility. In that the applicant has failed to establish extreme hardship to his U.S. citizen mother, he is statutorily ineligible for relief and 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. *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.