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U.S. Department of Homeland Security
20 Mass Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H-2

[Redacted]

FILE:

Office: PHOENIX

Date:

AUG 19 2008

IN RE:

[Redacted]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under sections 212(i) and 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) and 8 U.S.C. § 1182(h) respectively.

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, Phoenix, Arizona, 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 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 committed a crime involving moral turpitude; and section 212(a)(6)(C) of the Act for having, by fraud or willfully misrepresenting a material fact, attempted to procure admission into the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen mother, [REDACTED]. The applicant seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(h) of the Act, 8 U.S.C. § 1182(i) and 8 U.S.C. § 1182(h) respectively, in order to reside in the United States with his U.S. citizen parents and U.S. citizen daughter.

The record reflects that the applicant first entered the United States without inspection on August 8, 1988. The applicant was placed in deportation proceedings in 1990 and granted voluntary departure in 1992. However, the proceedings were reopened and subsequently terminated on February 8, 1996 to allow the applicant to pursue adjustment of status. The applicant's mother filed the I-130 petition on February 25, 1992 and it was approved on March 27, 1992. The applicant subsequently filed an Application to Register Permanent Residence or Adjust Status (Form I-485) in January 1996. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) on or about February 16, 2006.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of District Director*, dated March 28, 2006.

On appeal, counsel addresses the reasons given by the district director in denying the application and asserts that the evidence shows that the applicant's mother depends on the applicant for assistance with her medical conditions. *Petitioner's Supporting Brief on Appeal* at 2-4. Counsel also asserts that the applicant has not misrepresented that he is unmarried as manifested by several affidavits that refer to his wife—a misunderstanding on the part of the affiants due to the applicant's committed relationship with the mother of his daughter [REDACTED]. *Id.* at 4-5. Counsel further states that the applicant has submitted evidence to show that his mother does not have any immediate relatives in Mexico contrary to the assertion of the district director in the decision. *Id.* at 5. Finally, counsel asserts that the district director erred in finding that the applicant's absence would not cause his mother extreme hardship because the evidence shows that all of his other family members are involved in her care. *Id.* Counsel contends that the evidence shows that only the applicant, his father and his sister [REDACTED] all of whom work full-time, participate in caring for the applicant's mother. *Id.*

The record contains, among other documents, birth records and identification documents for the applicant and family members; letters from the applicant's family members; a letter from [REDACTED], physician to the applicant's mother; medical records for the applicant's mother; employment letters; letters from acquaintances and friends; photographs and country reports for Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(i) In general.— . . .[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.

Court documents in the record reflect that the applicant was convicted on March 14, 2002 in Superior Court of the State of Arizona, County of La Paz, of felony aggravated assault, and was sentenced to 3 years probation. The BIA has held that when aggravating circumstances are elements of an assault offense, the crime is a crime involving moral turpitude. *See Knapik v. Ashcroft*, 384 F.3d 84 (3d Cir. 2004) (The court upheld a BIA decision that reckless endangerment in the first degree under New York law was a crime involving moral turpitude because the statutory elements of depravity, recklessness, and grave risk of death, when considered together, implicated accepted rules of morality and duties owed to society). The applicant has not disputed that he is inadmissible pursuant to Section 212(a)(2)(A) of the Act.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record reflects that the applicant has admitted that on February 16, 1996, he attempted to enter the United States through the San Luis, Arizona Port of Entry by falsely claiming to be a U.S. citizen. The applicant has not disputed that he is inadmissible pursuant to section 212(a)(6)(C) of the Act.

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 . . .

Section 212(i) of the Act provides that:

(1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of

admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The AAO notes that both section 212(i) and section 212(h) of the Act provide 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. Although the applicant's child and parents are qualifying relatives under section 212(h) of the Act, the only relatives that qualify under both section 212(i) and section 212(h) are the applicant's parents. Hardship to the applicant is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. 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, 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).

The AAO notes that in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.)

The AAO notes further, however, that 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. 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.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

In her letter, [REDACTED] states that she has been providing care for the applicant's mother, who had a stroke in 2000, since November 2005 and is "concerned regarding the significant emotional stress placed on [her] due to the present rejection of [the applicant's] application for permanent residence in the United States." Dr. [REDACTED] indicates that the applicant's mother lives with one of her daughters, but that the applicant visits daily after work to assist in her care. [REDACTED] states that she is concerned that the potential departure of the applicant's son will "adversely affect [his mother's] physical health" as she has "already developed symptoms of depression and anxiety as a result of the emotional anguish."

In a letter from the applicant's sister [REDACTED] she states that the applicant has assisted in transporting their mother to her doctor's appointments and that she needs two people to assist her with mobility. [REDACTED] also states that even mentioning the applicant's immigration issues heightens their mother's nervousness and tension, and that "without a doubt her health both emotionally and physically would be severely affected if [the applicant]" left the country. [REDACTED] also indicates that the applicant's mother would not be able to get the necessary assistance if she relocated to Mexico. The applicant's friends and acquaintances all attest that the applicant assists the rest of his family in the care of his mother and that he also provides essential financial and other support to his daughter and her mother.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, supports a finding that the applicant's parents and his daughter face extreme hardship if the applicant is not granted a waiver of inadmissibility.

The record shows that the applicant's parents, particularly his mother, would suffer extreme hardship if she relocated to Mexico. The evidence shows that she is disabled and requires medical care that she would be less likely to receive there. She resides with and is cared for by one of her daughters and the applicant in the United States, and she would be separated from all of her children except the applicant if she relocated to Mexico. The AAO also finds that the applicant's mother would suffer extreme hardship if she chooses to remain in the United States. [REDACTED] has indicated that the applicant's mother already experiences "significant emotional stress" and "the symptoms of depression and anxiety" as a consequence of the rejection of the applicant's application permanent residence, and indicates that the applicant's departure would adversely affect her physical health. The evidence in the record shows that the applicant's mother recently had a stroke that left her incapacitated and confined to a wheelchair. The evidence in the record demonstrates that the applicant's mother relies upon the applicant for daily assistance and some financial support. It is also noted that the applicant's U.S. citizen daughter relies upon the applicant for support, and would suffer emotionally if she were separated from her father. Based on the above factors, the applicant has established that his parents and his daughter would suffer extreme hardship if he were ordered removed from this country or if they moved to Mexico with the applicant.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the Board held that establishing extreme hardship and eligibility for section 212(h)(1)(B) relief does not create an entitlement to that relief, and that

extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General (Secretary of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. *See Matter of Cervantes-Gonzalez, supra*, at 12.

The equities in this case warrant a favorable exercise of discretion. The negative factors in this case consist of the applicant's unlawful presence in the United States, his false claim of U.S. citizenship to procure admission to the United States and his 2002 conviction for aggravated assault. The positive factors in this case include the applicant's strong family ties to the United States, the hardship that the applicant's parents and daughter would suffer if the applicant were removed from the United States, the applicant's employment and other contributions to his community, and no indication of further arrests or convictions for the applicant since 2002. Although the applicant's criminal past and violations of the immigration laws of the United States cannot be condoned, the positive factors in this case outweigh the negative factors.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.