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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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FILE:



Office: LOS ANGELES, CA

Date:

AUG 20 2008

IN RE:

Applicant:



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 Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) 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, and the waiver application will be denied.

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 applicant seeks a waiver of his ground of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h).

The district director found that the applicant had been convicted of three crimes involving moral turpitude (two theft of property convictions and one conviction for assault with a deadly weapon/instrument,) and that he was therefore inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The district director determined that the applicant had failed to establish that a qualifying family member would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601 was denied accordingly.

On appeal the applicant indicates that his family, especially his U.S. citizen father and U.S. lawful permanent resident mother, would suffer extreme hardship if he were denied admission into the United States.

Section 212(a)(2)(A)(i) of the Act provides in pertinent part that:

[A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(1) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(a)(2)(A)(2)(ii) of the Act, 8 U.S.C. § 1182(a)(2)(A)(2)(ii) provides in pertinent part:

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed.)

The Board of Immigration Appeals (Board) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992) that:

[I]n determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. . . .

The record reflects that the applicant has the following relevant criminal history¹:

June 2, 1998 – Convicted of Theft of Property, in violation of California Penal Code (PC) Section 484(a).

July 21, 1998 – Convicted of Theft of Property, in violation of California PC Section 484(a).

March 19, 2002 – Convicted of Assault with a Deadly Weapon/Instrument, in violation of California PC Section 245(A)(1).

California PC Section 484(a) states in pertinent part:

Every person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him or her, or who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property, or who causes or procures others to report falsely of his or her wealth or mercantile character and by thus imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another, is guilty of theft. . . .

The AAO finds that the elements contained in California PC 484(a) describe a crime involving moral turpitude. Moreover, “[i]t is well-settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude.” *Matter of Scarpulla*, 15 I&N Dec. 139, 140-141 (BIA 1974.) The U.S. Ninth Circuit Court of Appeals held further in, *United States v. Esparada-Ponce*, 193 F.3d 1133 (9th Cir. 1999) that the crime of petty theft in California is a crime involving moral turpitude. The applicant’s convictions for Theft of Property therefore constitute convictions for crimes involving moral turpitude.

California PC Section 245(a)(1) states that:

Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or both the fine and imprisonment.

¹ It is noted that the record contains evidence of other offenses and convictions that are not crimes involving moral turpitude or occurred when the applicant was a juvenile.

California PC Section 240 states that:

An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.

Where a statute contains no element of intent in its definition, it may nevertheless be found to be a crime involving moral turpitude if it contains an element of criminally reckless conduct. *Matter of Perez-Contreras, supra* at 618. The Board described criminally reckless conduct as “the awareness of and conscious disregard of a substantial and unjustifiable risk” or “the conscious disregard of a substantial and unjustifiable risk.” The AAO notes that the assault with a deadly weapon/instrument statute under which the applicant was convicted contains no intent element. The AAO finds that the statute does, however, contain an element of conscious disregard of a substantial and unjustifiable risk. Moreover, courts have held that assault with a deadly weapon is a crime involving moral turpitude. *See Yousefi v. U.S. INS*, 260 F.3d 318, 326-27 (4th Cir. 2001) and *Gonzales v. Barber*, 207 F.2d 398, 400 (9th Cir. 1953), *aff’d. on other grounds*, 347 U.S. 637 (1954.) The AAO therefore finds that the applicant’s conviction under California PC Section 245(a)(1) constitutes a conviction for a crime involving moral turpitude.

Because the applicant was convicted of three crimes involving moral turpitude, he does not qualify for consideration under the exception contained in section 212(a)(2)(A)(ii)(II) of the Act.

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

The Attorney General [now, Secretary, Homeland Security, “Secretary”] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2)

(1)(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(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.

The record reflects that the applicant’s father is a U.S. citizen, and that his mother is a U.S. lawful permanent resident. The record reflects further that the applicant has three U.S. citizen children. The applicant’s parents and children are thus qualifying family members for purposes of section 212(h) of the Act.²

² The record reflects that the applicant is married to a woman born in Mexico. The record contains no evidence relating to the applicant’s wife’s immigration status in the U.S.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors deemed relevant in determining whether an alien has established extreme hardship. 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 Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

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). In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the U.S. Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The U.S. Ninth Circuit Court of Appeals emphasized that the common results of deportation are insufficient to prove extreme hardship.

The record contains the following evidence relating to the applicant's extreme hardship claim:

A letter signed by the applicant's father reflecting in pertinent part that he and the applicant's mother are experiencing severe stress and depression over the possibility that the applicant may not be allowed to remain in the United States. Mr. [REDACTED] states that his job performance is declining due to the stress. He states that he and the applicant's mother are very close to the applicant, and he states that the applicant's absence would result in extreme emotional, psychological and physical hardship to them.

A letter from [REDACTED]'s employer stating in pertinent part that [REDACTED] appears stressed and distracted at work due to his son's possible deportation from the United States.

Two letters from the applicant's mother's coworkers, indicating in pertinent part that the applicant's mother appears stressed and depressed at work due to the applicant's immigration problems, and that she seems worried for his future.

Three U.S. birth certificates reflecting that the applicant has three children: [REDACTED], born March 28 1998 (10 years old); [REDACTED], born May 4, 2000 (8 years old); and [REDACTED], born October 18, 2004 (3 years old.)

A letter from the applicant's son [REDACTED] first grade teacher indicating that the applicant is involved in his son's academic activities, and that [REDACTED] is a high achiever in school in part because of his father's involvement.

A letter reflecting that the applicant's daughter, _____ is enrolled in her school's Head Start program, and stating that _____ parents help in the classroom regularly.

The AAO finds, upon review of the evidence, that the applicant has failed to establish that his parents and children would suffer hardship beyond that which is normally experienced upon the removal of a family member, if the applicant's waiver of inadmissibility is denied.

The applicant makes no assertions of hardship his parents or children would suffer if they moved with him to Mexico, and the record contains no evidence addressing this issue. The applicant therefore failed to establish that his parents and children would experience extreme hardship if they moved to Mexico with him.

The applicant additionally makes no assertions of hardship that his children would suffer if he were denied admission into the United States, and his children remained in the United States. Furthermore, the letters and school evidence contained in the record are general and contain no detailed or corroborated claims to establish that the applicant's parents and/or children would suffer hardship beyond that normally experienced upon the removal of a family member, if the applicant's waiver of inadmissibility were denied, and they remained in the United States.

Having found the applicant ineligible for relief, the AAO notes no purpose in discussing whether the applicant merits a waiver as a matter of discretion.

Section 291 of the Act provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to meet his burden of proof in the present matter. The appeal will therefore be dismissed, and the Form I-601 application will be denied.

ORDER: The appeal is dismissed. The application is denied.