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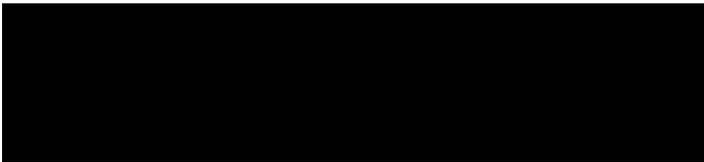
IN RE:



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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John P. Grisson, Acting 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 been convicted of a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated April 6, 2006.

On appeal, counsel for the applicant contends that the applicant's permanent resident wife and U.S. citizen daughter will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel*, dated April 27, 2006. Thus, counsel asserts that the present waiver application should be approved. *Id.*

The record contains briefs from counsel; a psychological evaluation of the applicant's wife and daughter; statements from the applicant's wife, the applicant's daughter, and the applicant's pastor; a copy of the applicant's marriage certificate; a copy of the applicant's wife's permanent resident card; a copy of the applicant's daughter's birth certificate; a copy of the applicant's daughter's naturalization certificate; tax records for the applicant and his wife; a copy of a deed to property owned by the applicant and his wife; copies of bills for the applicant and his wife; documentation of the applicant's employment; a report on conditions in Mexico, and; documentation in connection with the applicant's criminal conviction. The entire record was reviewed and considered in rendering this decision.

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

- (A)(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) 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) [or] (B) . . . of subsection (a)(2) . . . if-

- (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 [now the Secretary of Homeland Security (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

The record reflects that the applicant was convicted of endangerment and aggravated driving under the influence of intoxicating liquors (“DUI.”) The convictions arose out of the same instance of conduct, for which he received a total sentence of six months incarceration and two years probation. The record reflects that the applicant’s DUI conviction was deemed aggravated as he was driving a vehicle under the influence of alcohol while his license was suspended due to prior convictions for DUI. There is ample precedent to establish that the applicant’s aggravated DUI conviction was a crime involving moral turpitude. *See Hernandez-Martinez v. Ashcroft*, 329 F.3d 1117 (9th Cir. 2003); *Matter of Lopez-Meza*, 22 I&N Dec. 1188 (BIA 1999). As the district director provided a detailed analysis of the applicant’s conviction and inadmissibility under Arizona law, and the applicant does not contest the district director’s analysis in part or in whole, the AAO will not repeat the district director’s analysis in this decision. *See Notice of Intent to Deny Form I-485 Application and Instruction to Applicant to File the Present Form I-601 Application*, at 1-3, dated December 1, 2005. The AAO agrees with the district director’s analysis, and the applicant does not contest his inadmissibility on appeal.

The AAO notes that section 212(h)(1)(B) 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. Hardship the applicant himself experiences due to his inadmissibility is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant’s U.S. citizen daughter and permanent resident wife. *Id.* If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act.

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 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.

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).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), 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 that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The

AAO further notes that the applicant's wife or daughter would possibly remain in the United States if the applicant departs. Separation of family will therefore be carefully considered in the assessment of hardship factors in the present case.

On appeal, counsel contends that the applicant's permanent resident wife and U.S. citizen daughter will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel* at 1-3. Counsel asserts that the applicant's wife and daughter would suffer mental hardship should they be separated from the applicant. *Id.* at 1. Counsel explains that the applicant's wife has never lived separately from the applicant in 37 years of marriage. *Id.* at 2. Counsel notes that the applicant's wife's entire family resides in the United States, including her sister, brother, children, and grandchildren. *Id.* at 3. Counsel asserts that the applicant's wife would endure significant hardship if she relocated to Mexico with the applicant and lost the benefit of being near her other family members. *Id.* Counsel further contends that the applicant's wife would suffer economic hardship should the applicant depart the United States, as their joint income is \$32,000 per year and they struggle. *Id.*

The applicant provided a report from a licensed psychologist, [REDACTED], in which [REDACTED] assessed the mental health of the applicant's wife and daughter. *Report from [REDACTED]*, undated. [REDACTED] provided that she interviewed the applicant's wife and daughter for one hour. *Id.* at 2. She stated that "My intent is to establish extreme hardship due to the current mental health that will likely be exacerbated should [the applicant] face deportation." *Id.* She described the history of the applicant's wife and daughter. *Id.* She stated that the applicant and his wife have been married for 37 years, and that they depend on each other. *Id.* She noted that the applicant and his wife do not speak English, and they have 6th grade educations. *Id.* She explained that the applicant's wife fears that her home will go into foreclosure should she lose the applicant's financial contribution. *Id.* She stated that the applicant's wife does not wish to leave her extended family who reside in the United States. *Id.* [REDACTED] provided that the applicant's wife expressed concern that the applicant will be unable to care for himself alone. *Id.* She provided that the applicant's wife is experiencing symptoms of clinical depression. *Id.* at 3.

[REDACTED] stated that the applicant's daughter is 32-years-old and she has three young children. *Id.* at 2. She indicated that the applicant's daughter relies on the applicant for advice and home repairs. *Id.* She provided that the applicant's daughter expressed concern for the applicant should he return to Mexico alone. *Id.* at 2-3. [REDACTED] stated that the applicant's daughter is exhibiting symptoms of adjustment disorder with depressed mood and anxiety. *Id.* at 3.

The applicant's wife stated that she has been living in the United States with the applicant for almost 30 years, and that she cannot see being separated from him. *Statement from Applicant's Wife*, undated. She provided that she would have to join the applicant should he depart the United States. *Id.* at 1. She stated that she and the applicant own a home in the United States, yet they have nothing in Mexico. *Id.* She provided that her family is close, and they get together every weekend, on holidays, and for birthdays. *Id.* She stated that it would cause her anguish to be away from her children and grandchildren. *Id.*

The applicant's daughter stated that her family is very close, and she does not wish to be separated from the applicant. *Statement from Applicant's Daughter*, dated February 3, 2006. She provided that the applicant pays most of the bills for his household. *Id.* at 1.

The record contains a letter verifying the applicant's employment since 1990 in a landscape department, earning \$8.75 per hour as of October 14, 2005. *Employment Letter*, dated October 14, 2005. The applicant's and his wife's 2004 IRS Form 1040 reflects that they earned a combined income of \$30,987 in 2004. *2004 IRS Form 1040*.

Upon review, the applicant has shown that a qualifying relative will experience extreme hardship should the present waiver application be denied. Specifically, the applicant has established that his wife will experience extreme hardship should he be prohibited from remaining in the United States. This finding is primarily based on the long duration that the applicant has resided in the United States with his wife and children as a close family, and the length of time the applicant's wife has resided and built her life in the United States. *See Salcido-Salcido*, 138 F.3d at 1293.

Should the applicant depart the United States, and his wife remain, his wife would experience extreme hardship. The applicant's wife has been married to the applicant since October 11, 1967, for 41 years as of the date of the present decision. The record supports that they have lived as a family in the United States since approximately 1979, for approximately 29 years. The AAO has given consideration to the report from [REDACTED]. The report is of limited use in the present proceeding, as the applicant has provided no evidence that his wife received or required follow-up evaluation or care from a mental health professional. However, it is helpful in providing an understanding of the background and challenges of the applicant's wife, and it does represent a professional opinion that the applicant's wife is experiencing emotional consequences due to possible separation from the applicant. Given the long duration of residence as a close family in the United States, the AAO finds that separating the applicant from his wife would cause her substantial emotional suffering.

The record shows that the applicant and his wife have limited financial resources. Yet, the applicant has not provided sufficient explanation or documentation to show that his wife would be unable to meet her needs in his absence. The applicant and his wife own a home, and the applicant has not shown the value of this property, or explained whether it can be sold to reduce his wife's financial needs and generate profit. The applicant's wife works, thus it is evident that she is able to earn income. However, the AAO acknowledges that the applicant's wife would experience economic challenges if compelled to forego the financial contribution of the applicant.

Based on the foregoing, the applicant has shown by a preponderance of the evidence that the hardships to his wife should she remain in the United States without him, considered in aggregate, constitute hardship that is greater than that which would ordinarily be expected of family members separated as a result of deportation. *See e.g., Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991).

The AAO further finds that the applicant's wife would experience extreme hardship should she return to Mexico. She has resided in the United States for approximately 29 years, and she has many family members here. The applicant's wife has explained that she is close with her family members in the United States and that leaving them would cause emotional hardship. She owns a home in the United States, and she and the applicant have stable employment that accommodates their needs. Thus, the applicant's wife has strong ties

to the United States. If she relocates to Mexico, the applicant's wife would be compelled to find employment in a weaker economy where she would be unlikely to earn comparable compensation.

The AAO finds that uprooting her life and relocating to Mexico at age 59, after 29 years in the United States, would cause significant hardship for the applicant's wife. Thus, the applicant has shown by a preponderance of the evidence that the hardships to his wife should she relocate to Mexico, considered in aggregate, constitute hardship that is greater than that which would ordinarily be expected of family members who relocate abroad as a result of the inadmissibility of a close family member. As noted above, the AAO bases this finding primarily on the applicant's wife's long duration of residence in the United States, and her significant family and economic ties to the country. *See e.g., Hassan, 927 F.2d at 468.*

Based on the foregoing, the AAO finds that the applicant's wife will face extreme hardship if the applicant's waiver application is denied. Thus, the applicant has shown that a qualifying relative would suffer extreme hardship if he is required to depart the United States.

The applicant has presented evidence that his daughter would experience hardship should he be compelled to depart the United States. The record reflects that the applicant's daughter resides in the United States with her three children. The record supports that she would experience emotional hardship should she be separated from the applicant. However, the applicant has not established that this hardship would go beyond that which would ordinarily be expected when a close family member is compelled to depart the United States. The applicant has not shown that his daughter depends on him for economic support or other needs. Accordingly, the applicant has not established that his daughter would experience extreme hardship should the present waiver application be denied. However, as the applicant has shown that his wife would experience extreme hardship, he is eligible for consideration for a waiver of inadmissibility under section 212(h) of the Act.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA 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 (now Secretary of the Department 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 negative factors in this case consist of the following:

The applicant has been convicted of driving under the influence of alcohol on several occasions, posing a serious risk of physical harm to himself and others in the United States. In operating a vehicle under the influence of alcohol while his license was suspended in connection with a prior DUI, the applicant showed a disregard for the laws of the United States.

The positive factors in this case include:

The applicant has significant family ties to the United States, including his wife, daughter, and grandchildren; the applicant's wife would suffer extreme hardship if the applicant is compelled to depart the United States; the applicant provides support for his disabled brother in the United States; the applicant maintains

employment in the United States and pays taxes; the applicant has not been convicted of any crimes in approximately 10 years, and; the applicant participates in his community, such as participating in projects with his church.

The positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden that he merits approval of his application.

ORDER: The appeal is sustained.