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U.S. Citizenship
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FILE: [REDACTED] Office: CHICAGO, IL

Date: DEC 23 2008

IN RE: Applicant: [REDACTED]

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.

A handwritten signature in black ink that reads "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved. The matter will be returned to the district director for continued processing.

The applicant, a native and citizen of Mexico, was found 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 sought 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 with his U.S. citizen spouse and children.

The district director concluded that that the applicant had 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 May 26, 2005.

In support of the appeal, counsel submits a brief, dated July 25, 2005; a letter from the applicant's U.S. citizen spouse, dated July 15, 2005; copies of birth certificates for the applicant's biological U.S. citizen children, born in 2000 and 2003; financial documentation with respect to the applicant's household; medical documentation relating to the applicant's U.S. citizen stepchild, born in 1985; and a certified statement of conviction/disposition with respect to the applicant. The entire record was reviewed and considered in rendering this decision.

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

[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:

The Attorney General [now Secretary, Homeland Security, (Secretary)] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . 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 (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 . . . ¹

Regarding the applicant's ground of inadmissibility, the record reflects the commission of a crime involving moral turpitude. In November 1994, the applicant was convicted of Burglary, a violation of section 19-1 of the Illinois Criminal Code.² The applicant was placed on probation for a period of 30 months and restitution was imposed. As the aforementioned crime was committed after the applicant's eighteenth birthday, the district director correctly found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.³ The applicant is eligible for a section 212(h) waiver of the bar to admission.

A section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the inadmissibility bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son or daughter of the applicant. The relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen spouse, children and step-child.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) the BIA held that:

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

¹ Section 212(h) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. If extreme hardship is established, USCIS must then assess whether to exercise discretion.

² Section 19-1 of the Illinois Criminal Code states, in pertinent part:

- (a) A person commits burglary when without authority he knowingly enters or without authority remains within a building, housetrailer, watercraft, aircraft, motor vehicle as defined in The Illinois Vehicle Code, [FN1] railroad car, or any part thereof, with intent to commit therein a felony or theft.
- (b) Sentence.

Burglary is a Class 2 felony.

³ The AAO notes that the applicant does not dispute the district director's finding that the offense for which he was convicted constitutes a crime involving moral turpitude.

hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

The applicant's spouse asserts that she and her children will suffer extreme emotional, physical and financial hardship were they to remain in the United States while the applicant relocates abroad due to his inadmissibility. As stated by the applicant's spouse,

I live at _____ with my husband [the applicant], my children, my mother, and grandson.

For the past 9 years, my husband [_____] applicant] he has always been a very responsible, hard-working, and giving person. He always helps with household chores and with all the children. He is devoted to his girls and our family.

We've struggled a bit over the years...but have somehow managed to care for 3 children, a grandson, and now my 81-year old mother who has suffered several strokes.

My eldest daughter, _____ has suffered severe emotional and behavior problems due to an ependymoma brain tumor. She suffers severe headaches, frequent vomiting, difficulty walking, excessive sleepiness, blurred vision, irrational decision making, and difficulty retaining information. She's had 4 surgeries to remove the tumors. She is under continuous care of her surgeon.... This illness was a big blow to our quality of life...and _____ has been involved with her and her illness since she was first diagnosed. Without his help, I'd don't know where I would be or how I would manage. We are her caregivers.

Also, my 81-year mother...suffered 2 strokes (June 2004 and May 2005) which have affected her memory, her balance, and her logic. She also suffers from osteoarthritis, which prevents her from physically caring for herself. She can no longer live on her own. _____ and I care for her and her needs.

These 2 family ailments have made our life difficult but _____ and I care for them and their needs, in addition, to our other 2 children, our jobs, and our own personal relationship.

Aside from our personal life, _____ is a key figure in our family; he has held me together when I felt that I couldn't cope anymore. Without

him, I can't fathom what I would do. Caring for my eldest, my mother, and my 2 youngest on my own is inconceivable.

We also have a lot of expenses....

Without him, I will undoubtedly lose my house and my car because I cannot meet these expenses on my salary. I will not be able to send my kids to day-care because that is also and [sic] expense that I cannot cover....

Letter from [redacted] dated July 15, 2005.

A letter has been provided from [redacted] corroborating the applicant's step-child's, Arielle's, medical situation. As stated by [redacted]

[redacted] [the applicant's step-child] is a patient of [redacted] in the Falk brain tumor center at Childrens Memorial Hospital. She has been a patient since June of 2001 when she was diagnosed with a brain tumor [Ependymoma].

Since that time, she has undergone 3 surgical resections of the tumor....

She continues to be followed with frequent MRI scans....

Letter from [redacted] RN, Brain tumor coordinator, Childrens Memorial Hospital, dated October 3, 2003.

Were the applicant removed from the United States, the applicant's U.S. citizen spouse would have to assume the role of primary caregiver and breadwinner to two young children, one adult child who suffers a serious and life-threatening medical condition, namely, a brain tumor, and an elderly and gravely sick mother, without the complete emotional, physical and financial support of the applicant. The AAO thus concludes that the applicant's U.S. citizen spouse would suffer extreme hardship were the applicant to relocate abroad while she remains in the United States. The applicant's spouse needs her husband's support on a day to day basis.

Extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. Based on the applicant's step-child's medical condition, the gravity and unpredictability of the symptoms associated with the illness, the short and long-term ramifications for those afflicted, the need for those suffering from Ependymoma to be treated by medical professionals familiar with the disease and its treatment, the applicant's step-child's dependence on her mother and step-father and the applicant's spouse's mother's grave medication situation, the AAO concludes that the applicant's U.S. citizen spouse

would suffer extreme hardship were she to relocate to Mexico to reside with the applicant due to his inadmissibility.⁴

Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. " *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse and children would face if the applicant were to return to Mexico, regardless of whether they accompanied the applicant or remained in the United States, the applicant spouse's mother's medical condition, property ownership, the applicant's history of gainful employment, the number of letters of support provided on behalf of the applicant from family and friends, payment of taxes and the passage of fourteen years since the applicant's conviction for a crime of moral turpitude. The

⁴ As the AAO has determined that extreme hardship exists with respect to the applicant's U.S. citizen spouse were the applicant removed from the United States, it is not necessary to evaluate whether the applicant's U.S. citizen children would experience extreme hardship were the applicant removed from the United States

unfavorable factors in this matter are the applicant's conviction for a crime of moral turpitude, unlawful entry after removal, and unauthorized presence and employment in the United States.

The crime committed by the applicant was serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

Finally, the AAO notes that the District Director also denied, on May 26, 2005, the applicant's Form I-212, Application for Permission to Reapply for Admission in the United States After Deportation or Removal (Form I-212). The Adjudicator's Field Manual, at Chapter 43 ("Consent to Reapply After Deportation or Removal"), states the following:

43.2 Adjudication Processes

- (c) Of course, an alien might be applying for both consent to reapply and a waiver of inadmissibility, provided the particular ground(s) of inadmissibility applying to the alien are waivable. If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose.

As the instant appeal is sustained and the waiver application is approved, the District Director shall reopen the denied Form I-212 on motion and re-consider said application on its merits.

ORDER: The appeal is sustained. The waiver application is approved. The district director shall reopen the denial of the Form I-212 on motion and re-consider said application on its merits.