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**U.S. Citizenship
and Immigration
Services**

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142

[REDACTED]

FILE:

[REDACTED]

Office: SEATTLE (SPOKANE)

Date:

JUL 01 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:

[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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Form I-601, Waiver of Grounds of Inadmissibility (Form I-601) was denied by the District Director, Seattle, Washington. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the Form I-601 application will be denied.

The applicant is a 20-year-old 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 was additionally found to be inadmissible to the U.S. pursuant to section 212(a)(2)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(i)(II), for violating a law relating to a controlled substance. 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 determined 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 asserts, through counsel, that he was not convicted of a crime relating to a controlled substance, and that the district director erred in finding him to be inadmissible under section 212(a)(2)(i)(II) of the Act. The applicant asserts further that he qualifies for an exception to his crime involving moral turpitude conviction because the sentence he received did not exceed one year of imprisonment. Alternatively, the applicant asserts that his U.S. lawful permanent resident parents would suffer extreme hardship if he were denied admission into the United States. The applicant requests that his Form I-601 be approved accordingly.

Section 212(a)(2)(A) of the Act provides 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 . . . or

(II) a violation of . . . any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

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

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(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).

Section 101(a)(48) of the Act, 8 U.S.C. § 1101(a)(48), defines the term, “conviction” as:

[A] formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where-

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.

The Board of Immigration Appeals held in *Matter of K-*, 7 I&N Dec. 594 (BIA 1957) that, in order for an admission of acts which constitute the essential elements of a crime to be properly used as a basis for inadmissibility, three conditions must be met, including: 1) the admitted acts must constitute the essential elements of a crime in the jurisdiction in which they occurred; 2) the respondent must have been provided with the definition and essential elements of the crime prior to making the admission, and; 3) the admission must have been voluntary.

In the present matter, the record contains no evidence to indicate that the applicant was convicted of a crime relating to a controlled substance. The record also contains no evidence to indicate that the applicant admitted to committing the essential elements of a violation of any law relating to a controlled substance, as outlined in *Matter of K, supra*. Rather, it appears that the district director’s finding of inadmissibility under section 212(a)(2)(A)(i)(II) of the Act was based on medical test results and other documentation submitted as part of the application for lawful permanent resident status. This evidence reflects that the applicant tested positive for use of amphetamine and methamphetamine, and that he may be drug dependent. However, because the applicant did not admit to the essential elements of a crime relating to a controlled substance, and because he was not convicted under a controlled substance related law, the applicant is not inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

The AAO finds, nevertheless, that the applicant was correctly found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act, for having been convicted of a crime involving moral turpitude. Criminal record evidence contained in the record reflects that on March 15, 2006, when the applicant was eighteen years old, the applicant plead guilty to the offense of Possessing Stolen Property in the 2nd Degree, in violation of the Washington State criminal code, RCW 9A.56.160(a)(1) and RCW 9A.56.140(1).

The 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. . . .

RCW 9A.56.160(1) provides that:

A person is guilty of possessing stolen property in the second degree if:

- (a) He or she possesses stolen property, other than a firearm . . . or a motor vehicle, which exceeds two hundred fifty dollars in value but does not exceed one thousand five hundred dollars in value

RCW 9A.56.140(1) provides that:

Possessing stolen property means knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.

The offense committed by the applicant contains an element of knowing or intentional corrupt conduct. The applicant was thus correctly found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The AAO finds that the exceptions contained in section 212(a)(2)(A)(ii) of the Act do not apply to the applicant's case. The applicant was not under the age of eighteen when he committed a crime involving moral turpitude. Furthermore, section 212(a)(2)(A)(ii)(II), exception provisions clearly reflect that it is the maximum penalty possible for a crime, rather than the maximum sentence received, that determines eligibility for the exception. The applicant's Felony Judgment Sentence reflects that he received a maximum sentence of one year or less in jail. The maximum possible term for the crime, however, is five years in jail. *See Felony Judgment Sentence; see also, RCW 9A.20.020.*

Through counsel, the applicant asserts that a U.S. Supreme Court decision held that even where the maximum sentence is stated by Washington State law, a sentencing court cannot exceed the maximum set forth as a presumptive sentence under the Washington Sentencing Reform Act. The applicant asserts that the presumptive sentence for Possession of Stolen Property in the Second Degree is 0-60 days, and that legally, the maximum sentence that could have been imposed on the applicant is thus 60 days – within section 212(a)(2)(A)(ii)(II) of the Act, exception provisions. The AAO is unconvinced by the applicant's assertion. The applicant does not provide the name or citation of the Supreme Court case referred to, and no other legal basis is provided to support the assertion that the AAO should disregard statutory maximum five sentence provisions for the crime of Possession of Stolen Property in the Second Degree. The AAO therefore finds that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) 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

The record reflects that the applicant's mother and father are U.S. lawful permanent residents. Accordingly, the applicant's parents are qualifying family members for purposes of section 212(h) of the Act. Section 212(h) of the Act does not allow for consideration of extreme hardship to the applicant himself.

It is noted that under section 212(h) of the Act, 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.

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 June 4, 2005, letter signed by the applicant, stating in pertinent part that he has been in the United States since he was 1 ½ years old, and that his mother will worry about him, and will possibly become ill if he has to move to Mexico. The applicant indicates that his brother attends college, and that his sister is still in school, and he states that his parents cannot leave their home in the U.S. to move with the applicant to Mexico. The applicant states further that

his parents would not be able to adjust to life in Mexico, and that they would be unable to support a household in the U.S. and in Mexico.

The record contains no affidavits written by the applicant's parents. No other evidence of hardship is provided.

Upon review of the evidence, the AAO finds that the applicant has failed to establish that his parents would suffer hardship beyond that which is normally expected upon the removal of a family member, if the applicant were denied admission into the United States. The record contains no evidence to corroborate the general assertion that the applicant's mother might become ill if the applicant is denied admission into the United States. Additionally, "[t]he mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship." See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The AAO notes further that emotional hardship caused by severing family and community ties has been found to be a common result of deportation. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996.)

The evidence in the record also fails to demonstrate that the applicant's parents would suffer extreme hardship if they moved with the applicant to Mexico. As previously noted, emotional hardship caused by severing family and community ties has been found to be a common result of deportation. *Matter of Pilch, supra*. The AAO notes further that the applicant's parents are originally from Mexico, and hardship involving a lower standard of living and difficulties of readjustment to a different culture and environment have not been found to rise to the level of extreme hardship. *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986), that

Having found that the applicant is ineligible for relief, the AAO notes no purpose in addressing 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 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.