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

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[Redacted]

FILE:

[Redacted]

Office: PHOENIX, ARIZONA

Date: JUN 10 2008

[consolidated therein]

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.

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 dismissed.

On appeal, the applicant, through counsel, requested 30-days to submit a brief and/or evidence to the AAO. *Form I-290B*, filed July 27, 2006. The record contains no evidence that a brief or additional evidence was filed within 30-days. On August 31, 2007, the AAO sent counsel a facsimile requesting evidence of the brief and/or additional evidence, or a statement by counsel that neither a brief nor evidence was filed; however, the AAO received no reply from counsel. Therefore, the record must be considered complete.

The applicant is a native and citizen of Mexico who was found to be 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 record indicates that the applicant is married to a naturalized United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his United States citizen wife and United States citizen children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on his qualifying relatives and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated June 23, 2006.

On appeal, the applicant, through counsel, asserts that “[t]he District Director did not consider all of the evidence.” *Form I-290B*, filed July 27, 2006.

The record includes, but is not limited to, statements from the applicant’s wife and children, letters of recommendations from the applicant’s friends, family, employers, and co-workers, and criminal court dispositions from the Superior Court of California, Santa Barbara County, and Superior Court of Arizona, Maricopa County. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on November 25, 1987, the applicant was convicted of two (2) counts of burglary, in violation of California Penal Code (CPC) § 459, by a Superior Court judge in Santa Barbara County, California, and was sentenced to 180 days imprisonment and three (3) years probation. On August 24, 1992, the applicant was convicted of second-degree burglary of a vehicle, in violation of CPC § 459, by a Superior Court judge in Santa Barbara County, California, and was sentenced to 180 days imprisonment and three (3) years probation. Additionally, on February 18, 2003, a Superior Court judge in Maricopa County, Arizona, convicted the applicant of driving under the influence of intoxicating liquor, a misdemeanor, and endangerment, a class 6 felony, and sentenced the applicant to four (4) months imprisonment and three (3) years probation.

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

- (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 an attempt or conspiracy to commit such a crime...is inadmissible.

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

The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I)...of subsection (a)(2)...if -

- (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -

- (i) ...the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated; or

- (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...

In the present application, the record indicates that the applicant entered the United States in 1985 without inspection at San Ysidro, California. On January 20, 1988, an immigration judge ordered the applicant deported from the United States. On the same day, the applicant was removed from the United States to Mexico. On June 14, 1988, the applicant reentered the United States without inspection. On April 30, 2001, the applicant's wife filed a Form I-130 on behalf of the applicant, which was approved on July 5, 2002. On July 19, 2002, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On May 8, 2006, the applicant filed a Form I-601. On June 23, 2006, the District Director denied the Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relatives under section 212(h)(1)(B).

The AAO notes that the record reflects that the applicant has not been convicted of any additional crimes since his last conviction in 2003. The applicant's wife states the applicant "is extremely sorry for making the wrong decisions when he was young and wants to do the right thing by the law, his family and himself... [The applicant] is a great father to [their] children an[d] a good husband to [her]." Letter from [REDACTED] dated April 20, 2001. The applicant's daughter, [REDACTED] states the applicant "is a very respected and respectful man. Since [she] can remember he has been there for any kind of support [she] may need.... [Her] daddy regrets and apologizes for what he has done in the past." Letter from [REDACTED], dated April 20, 2006. The applicant's son, [REDACTED] states the applicant "is [his] role model.... Without him[, he] would be lost and confused in life. [His] dad is a very caring person and is always trying to help [them] with [their]

problems. When [he] think[s] about [his] future, [he] picture[s] [himself] just like him, a caring husband, responsible father, and a hard worker who provides food on the table, clothing, and shelter. Please do not separate [his] dad from [him] and [his] younger siblings. [He] know[s] [his] dad has made mistakes but he has learned from them.” *Letter from* [REDACTED] dated April 25, 2006. Mr. and Mrs. [REDACTED] state the applicant “is a good positive person to [s]ociety. He is family oriented. Spends a lot of time with his wife and kids.... [The applicant] is a good provider for his family.” *Letter from* [REDACTED] and [REDACTED] undated. Mr. and Mrs. [REDACTED] state “[t]hrough out [sic] the years, [they] have found [the applicant] to be trustworthy, honest, and reliable.... [They] see him as a committed person to his family, friends, in deeds, and in his word. [The applicant] is very committed to helping others when others are in need of help. He also does volunteer work for the community.” *Letter from* [REDACTED] and [REDACTED], dated March 9, 2006. Mr. [REDACTED] states the applicant “is a very responsible employee.... He is all about being productive.... [The applicant] is also a very thoughtful and giving person.” *Letter from* [REDACTED], undated. [REDACTED] states the applicant is “a very conscientious, hard-working person.... [He] know[s] him to be a trustworthy and honest guy. [The applicant] has made a huge effort to become a good citizen.” *Letter from* [REDACTED], dated March 16, 2006. The AAO finds that even though the applicant has demonstrated rehabilitation, he is not eligible for a waiver under section 212(h)(1)(A) of the Act, because his last criminal conviction occurred less than 15 years ago. Therefore, the applicant must establish extreme hardship to his spouse and children to receive a waiver under section 212(h)(1)(B) of the Act.

The applicant is seeking 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. A waiver under section 212(h) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent or child of the applicant. Hardship the alien himself experiences upon removal is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant’s United States citizen spouse and children. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

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 applicant’s wife states that if the applicant were removed from the United States, she does not know how she would provide for her children by herself. *See Letter from* [REDACTED] dated April 24, 2006. The applicant’s wife questions “[i]f [she] was left as a single parent, how [is she] going to continue [her] children’s world and [hers] as well. Will [she] be at [the] mercy of government aid? How would [they] survive on one salary? ... How [is she] going to keep a roof over [their] heads, pay for school expenses, car payments, utilities, health insurance, food, and clothing for kids.... [Her] children would be emotionally torn

apart.” *Id.* The AAO notes that neither the applicant nor his wife provided any statement regarding what, if any, hardship the applicant’s wife and children would suffer if they joined the applicant in Mexico. Additionally, the AAO notes that the applicant’s wife has not established that she has no transferable skills that would aid her in obtaining a job in Mexico. [REDACTED] states the applicant “is a very honest and [d]ependable person. He is a good provider.... He is always ready to help any one in need.” *Letter from [REDACTED]*, dated March 13, 2006. [REDACTED] states the applicant is “a very hard working individual. He is a responsible family man and provides for all his [c]hildren and [w]ife needs.” *Affidavit from [REDACTED]* dated February 23, 2006. [REDACTED], the applicant’s brother-in-law, states he has known the applicant “for over twenty years.... [He] strongly believe[s] that it would be an injustice to separate a well functional family and converted [sic] into [a] dysfunctional family that most likely will become extremely depended [sic] on the welfare system.... [The applicant’s wife] might suffer a nerviest [sic] breakdown and may cause her death due to her delicate health condition. [The applicant’s wife] has a history of suffering from having blackouts, severe migraine headaches (fainting episodes) and hypertension. [The applicant’s] children may also suffer from severe depression that they may need profession behavior health services.” *Letter from [REDACTED]* dated March 22, 2006.

The AAO notes that there is no medical documentation in the record establishing that the applicant’s wife is suffering from any medical conditions. Additionally, there was nothing from a doctor indicating exactly what the medical issues are, any prognosis or what assistance is needed and/or given by the applicant. The AAO notes that there was no documentation submitted establishing that the applicant’s wife could not receive treatment for her medical conditions in Mexico or that she has to remain in the United States to receive medical treatments. Additionally, the AAO notes that there are no professional psychological evaluations for the AAO to review to determine if the applicant’s wife and children are suffering from any depression or anxiety or whether any depression and anxiety is beyond that experienced by others in the same situation. The AAO finds that the applicant failed to establish that his wife and children would suffer extreme hardship if they joined the applicant in Mexico.

In addition, the applicant does not establish extreme hardship to his wife and children if they remain in the United States. As United States citizens, the applicant’s wife and children are not required to reside outside of the United States as a result of denial of the applicant’s waiver request. The AAO notes that the applicant established that he has been working at Foreman for Action Excavating since November 2001, and earns a significant portion of the income for the household. *See 2002, 2003, and 2004 Wage and Tax Statements (Form W-2) for the applicant and his wife; see also 2002, 2003, and 2004 U.S. Individual Income Tax Returns (Form 1040) for the applicant and his wife.* However, the record fails to demonstrate that the applicant will be unable to contribute to his family’s financial wellbeing from a location outside of the United States. Additionally, the applicant’s wife can maintain her employment in the United States to help with the household expenses. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States 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 Board of Immigration Appeals (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 addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. In *Hassan, supra*, the Ninth Circuit Court of Appeals held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's United States citizen wife and children will endure hardship as a result of separation from the applicant. However, their situation if they remain in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and children caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(2)(A) of the Act, the burden of proving eligibility remains entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.