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

H2

FILE:

Office: LOS ANGELES, CALIFORNIA

Date:

NOV 03 2008

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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, 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 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 crimes 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 spouse and United States citizen daughter.

The District Director found 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 Excludability (Form I-601) accordingly. *District Director's Decision*, dated July 13, 2006.

On appeal, the applicant, through counsel, contends that the District Director "erred in determining that the denial of the [applicant's] admission for lawful permanent residence would not result in extreme hardship to his United States citizen wife and child." *Form I-290B*, filed August 16, 2006.

The record includes, but is not limited to, counsel's brief, a declaration from the applicant, a psychological evaluation on the applicant's wife, court dispositions for the applicant's theft convictions, letters of recommendations, and photos of the applicant and his family. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on November 7, 1991, the applicant was convicted of petty theft, and was sentenced to ten (10) days in jail and twelve (12) months probation. On July 1, 1992, the applicant was convicted of petty theft, and was sentenced to five (5) days in jail and twelve (12) months probation. On October 6, 1992, the applicant was convicted of petty theft, and sentenced to ninety (90) days in jail. On September 22, 1993, the applicant was arrested for petty theft, and on November 4, 2003, he was convicted of this charge and was sentenced to two (2) years probation and a fine of \$370.

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

(A) *Conviction of certain crimes.*—

- (i) In general.—Except as provided in clause (ii), any 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...

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

Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in his discretion, waive the application of subparagraphs (A)(i)(I)...of subsection (a)(2) if—

(1) (A) in the case of any immigrant it is established to the satisfaction of the [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 established to the satisfaction of the [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...

(2) the [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien’s applying or reapplying for a visa, for admission to the United States, or adjustment of status.

In the present application, the record indicates that the applicant initially entered the United States without inspection in 1986. On April 30, 2001, the applicant’s wife filed a Form I-130 on behalf of the applicant. On April 5, 2002, the applicant’s Form I-130 was approved. On December 6, 2002, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On July 27, 2004, the applicant filed a Form I-601. On July 13, 2006, the District Director denied the applicant’s Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relatives.

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 daughter. 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 AAO finds that the applicant meets the requirements for a waiver of his grounds of inadmissibility under section 212(h)(1)(B) of the Act, in that the applicant's spouse and daughter would suffer emotional and financial hardship as a result of their separation from the applicant. Counsel states that the applicant "has been gainfully employed with Supreme Steel Treating, Inc. since April 10, 1995.... It is doubtful that given the dire economic conditions of Mexico that [the applicant] would be able to find gainful employment in Mexico and support [the applicant's wife] and their children either in the United States, or if they went to Mexico." *Appeal Brief*, page 9, filed October 11, 2006. The AAO notes that the record establishes that the applicant is the primary source of support for his wife and daughter. *See U.S Individual Income Tax Returns for 2002, 2001, 2000, and 1999; see also Wage and Tax Statements (Form W-2) for 2002, 2001, and 2000.*

diagnosed the applicant's wife with Posttraumatic Stress Disorder (PTSD), and he states that "[s]he is also presenting with symptoms of both depression and anxiety." *Psychological Evaluation performed by Ph.D.*, page 7, dated September 1, 2006. Dr. states the applicant's wife "appeared to have an excessive dependency on [the applicant]" and the applicant "is the stabilizing force in her life, her anchor, and her guide." *Id.* at 6. Dr. states the applicant's wife suffered "years of psychological and physical abuse" at the hands of her biological mother and ex-husband, however, "it appears that it is the present combination of supports that has helped [the applicant's wife] make the more adaptive transitions and changes in her life; [the applicant] and the stabilizing force he has had upon her life, and her faith and family, that have also served as a constant supportive role in her life." *Id.* at 6-7.

In regards to his criminal activity, counsel asserts that the applicant has been rehabilitated. *Appeal Brief, supra* at 12. The AAO notes that the majority of the applicant's arrests and convictions are from the early 1990's, and his recent conviction on November 4, 2003 stemmed from an arrest on September 3, 1993. *See Superior Court of California, County of Santa Clara, Proceedings Sentence, Probation Order*, dated November 4, 2003. The applicant states that his arrests "were the result of alcoholism for which [he has] now fully recovered. It has been almost thirteen years since [he] touched a drink. [He] credit[s] [his] transformation and rehabilitation to [his] renewed faith in God and conversion to Christianity in February of 1994." *Applicant's Declaration*, dated October 9, 2006. Reverend states the applicant "became a member of [their] congregation on February 16, 1994...[The applicant] is an active member and serves as a leader in [their] Men's Ministries group. [The applicant] has shown faithfulness not only to [their] organization, but to [their] community as well. In the time that [she has] known him, [the applicant] has demonstrated that he is a responsible and caring person. He has shown that he has good moral character." *Letter from Rev. President and Senior Pastor, Iglesia Roca de Salvacion*, dated May 13, 2004.

The AAO notes that the applicant is the primary provider for his wife and daughter. In *Matter of Recinas*, 23 I&N Dec. 467, 469-70 (BIA 2002), the respondent was “a single mother of six children, four of whom are United States citizens.... The respondent is divorced from the father of her United States citizen children...[and] there is no indication that he remains actively involved in their lives.” The respondent’s four United States citizen children were entirely dependent on their single mother for support, which is similar to the applicant’s situation in this case, in that his family is financially dependent on him. The BIA held that “the heavy financial and familial burden on the adult respondent, the lack of support from the children’s father, the United States citizen children’s unfamiliarity with the Spanish language,” and other factors, “render the hardship in this case well beyond that which is normally experienced in most cases of removal.” *Id.* at 472. The AAO finds that if the applicant were removed from the United States, his wife and daughter would suffer extreme hardship staying in the United States without their husband/father, the primary wage earner, or joining their husband/father in Mexico, where he does not have employment. The applicant’s wife and daughter are incapable of maintaining their wellbeing in the absence of the applicant. Additionally, the majority of the applicant’s wife’s family resides in the United States.

The favorable factors presented by the applicant are the extreme hardship to his United States citizen spouse and daughter, who depend on him for emotional and financial support; the applicant’s stable work history in the United States since 1995; the applicant’s history of paying his federal income taxes; and the lack of any other criminal convictions since his last conviction in 2003 stemming from a 1993 arrest. In addition to counsel’s brief, a declaration from the applicant and his pastor indicate that the applicant has become a law-abiding and responsible husband and father. The record of proceeding does not establish that the admission of the applicant to the United States would be “contrary to the national welfare, safety, or security of the United States.”

The unfavorable factors presented in the application are the applicant’s convictions for petty theft in 1991, 1992, and 2003, and periods of unauthorized presence and employment. The AAO notes that the applicant has not been charged with any crimes since his last conviction and the applicant’s crime occurred more than 15 years ago, demonstrating the applicant’s rehabilitation.

While the AAO does not condone his actions, the AAO finds that the favorable factors outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary’s discretion is warranted in this matter.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. See *Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the application is approved.