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U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

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[REDACTED]

FILE:

[REDACTED]

Office: CHICAGO

Date: NOV 28 2008

IN RE:

[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:

SELF-REPRESENTED

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 F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting Director, Chicago District Office. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained, and the application will be approved.

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 his ground of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h).

The director determined that the applicant had failed to establish a qualifying family member would suffer extreme hardship if the applicant were denied admission to the United States. The applicant's Form I-601, Application for Waiver of Ground of Excludability (now referred to as Inadmissibility), was denied accordingly.

On appeal, the applicant, through his spouse, asserts that his stepchild and three children are asthmatic and have allergies. He indicates that his spouse is on medication and has hypoglycemia, ADHD, and is manic depressive. The applicant maintains that he is the sole income provider of his household because his spouse does not work.

A Federal Bureau of Investigation (FBI) report based upon the applicant's fingerprints reveals that he was arrested on April 15, 2002 and charged with *Knowingly Damaging Property* and *Obstructing an Officer*. The applicant furnished court dispositions from the Circuit Court of Winnebago County, Illinois that indicate the applicant was, in fact, arrested for these crimes on the respective dates of April 10, 1996 and March 12, 1998. The applicant was arrested on April 10, 1996 for *Attempting to Obstruct Justice/Destroy Evidence* in violation of section 31-4(a) of the Illinois Criminal Code (Docket # [REDACTED]). The applicant was arrested on March 12, 1998 for *Knowingly Damaging Property of less than \$300* in violation of section 21-1(1)(a) of the Illinois Criminal Code (Docket # [REDACTED]). The dispositions indicate that on April 16, 2002, the Court issued an order to take the applicant into custody for a May 1, 2002 hearing on these offenses. The applicant was taken into custody, and during the May 1, 2002 hearing he pled guilty to both of the offenses. The applicant was sentenced for both of these offenses to a period of conditional discharge for twelve months and ordered to pay a fine of \$300. The sentence of conditional discharge is a restraint on the applicant's liberty and, therefore, constitutes a conviction pursuant to section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A).

The director determined that the applicant's conviction for *Attempting to Obstruct Justice/Destroy Evidence* in violation of section 720 5/31-4(a) of the Illinois Compiled Statutes is a conviction for a crime involving moral turpitude.

Section 212(a)(2)(A)(i) 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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Crimes involving moral turpitude are generally defined as an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *See Jordan v. De George*, 341 U.S. 223, 71 S.Ct. 703 (1951); *Matter of Serna* 20 I&N Dec. 579, 581 (BIA 1992). It is the “inherent nature of the crime as defined by statute and interpreted by the courts and as limited and described by the record of conviction” and not the facts and circumstances of the particular person’s case that determines whether the offense involves moral turpitude. *See, e.g., Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989); *Omagah v. Ashcroft*, 288 F.3d 254, 260 (5<sup>th</sup> Cir. 2002); *Goldeshtein v. INS*, 8 F.3d 645 (9<sup>th</sup> Cir. 1993). Neither the seriousness of the criminal offense nor the severity of the sentence imposed is determinative of whether a crime involves moral turpitude. *Matter of Serna*, 20 I&N Dec. 579, 581 (BIA 1992). Although evil intent signifies a crime involving moral turpitude, willfulness in the commission of the crime does not, by itself, suggest that it involves moral turpitude. *Goldeshtein v. INS, supra*. Under the statute, evil intent must be explicit or implicit given the nature of the crime. *Gonzalez-Alvarado, v. INS*, 39 F.3d 245, 246 (9<sup>th</sup> Cir. 1994).

Section 31-4 of the Illinois Criminal Code provides in pertinent part that:

§ 31-4. Obstructing justice.

A person obstructs justice when, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, he knowingly commits any of the following acts:

- (a) Destroys, alters, conceals or disguises physical evidence, plants false evidence, furnishes false information.

The Seventh Circuit Court of Appeals held in *Padilla v. Gonzalez*, 397 F.3d 1016 (7<sup>th</sup> Cir. 2005) that the offense of *Obstructing Justice* in violation of section 31-4(a) of the Illinois Criminal Code is a crime involving moral turpitude. The Court found that “the language of the statute requires that the defendant knowingly provide false information with the intent ‘to prevent the apprehension or obstruct the prosecution or defense of any person,’” which is a crime that is *mala in se*. *Padilla v. Gonzalez*, 397 F.3d 1016, 1020. The Court noted that, “[c]rimes that are *mala in se* are those that are contrary to ‘a society’s basic moral prohibitions,’ or ‘bad in themselves.’” *Padilla v. Gonzalez*, 397 F.3d 1016, 1020 (citing *United States v. Urfer*, 287 F.3d 663, 666 (7<sup>th</sup> Cir. 2002)). The Board of Immigration Appeals (BIA) has defined crimes that are *mala in se* as involving moral turpitude. The BIA stated in *Matter of Franklin* that, “[m]oral turpitude has been defined as an act which is per se morally reprehensible and intrinsically wrong, or *malum in se* so it is the nature of the act itself and not the statutory prohibition of it which renders a crime one of moral turpitude.” 20 I&N Dec. 867, 868 (BIA 1994), *aff’d*, 72 F.3d 571 (8<sup>th</sup> Cir. 1995). Therefore, the applicant’s conviction for *Attempting to Obstruct Justice/Destroy Evidence* in violation of section 31-4(a) of the Illinois Criminal Code renders him inadmissible to the United States.

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 resident spouse, parent, son, or daughter of such alien . . . .

Section 212(h) 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. 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 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 BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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).

The AAO notes that in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998), the Ninth Circuit Court of Appeals 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 further, however, that 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 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the 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 *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant married a United States citizen, [REDACTED] on April 23, 2001. The applicant's wife is a qualifying family member for section 212(h) of the Act extreme

hardship purposes. Additionally, the applicant indicated on his waiver application that he has three children, [REDACTED] and [REDACTED]. The Illinois Birth Certificates for [REDACTED] and [REDACTED] indicate that the applicant's wife is their mother. However, the section on birth certificates requesting their father's name is blank (although the children were given the applicant's last name, [REDACTED]).

Section 101(b)(1) of the Act, 8 U.S.C. §1101(b)(1), provides in pertinent part that:

As used in titles I and II- (1) The term "child" means an unmarried person under twenty-one years of age who is . . . (B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred.

The birth certificates for [REDACTED] and [REDACTED] show their respective dates of birth as January 31, 1998, January 28, 1999 and January 28, 1999. They were, therefore, under the age of eighteen at the time the applicant's marriage to their mother. Accordingly, they meet the definition of "child" under section 101(b)(1) of the Act and are qualifying family members for section 212(h) of the Act extreme hardship purposes. Furthermore, the applicant indicated on appeal that he has a stepdaughter, [REDACTED]. The Illinois Birth Certificate for [REDACTED] shows that the applicant's wife is her mother and [REDACTED] as her father. The birth certificate shows her date of birth as December 3, 1994. She was, therefore, under the age of eighteen at the time of the applicant's marriage to her mother. Accordingly, she also meets the definition of "child" under section 101(b)(1) of the Act and is a qualifying family member for section 212(h) of the Act extreme hardship purposes.

On appeal, the applicant, through his spouse, asserts that his stepchild and three children are asthmatic and have allergies. He indicates that his spouse is on medication and has hypoglycemia, ADHD, and is manic depressive. The applicant maintains that he is the sole income provider of his household because his spouse does not work. The applicant furnished the following documentation:

- Copies of medical records from Rockford Health Physicians documenting the December 21, 2005 and January 27, 2006 examinations of [REDACTED] and [REDACTED]. The records indicate that they were both diagnosed with moderate persistent asthma and prescribed Singulair, Albuterol and Flovent.
- Copies of [REDACTED]'s medical records from Rockford Clinic Department of Pediatrics. The records span the period of January 1995 through January 1996, and indicate that on October 15, 1995, [REDACTED] was diagnosed with asthma and prescribed Albuterol and Saline. The records state that in July 1995 [REDACTED] had an episode of wheezing and was then hospitalized for four days.
- Copies of medical records for the applicant's wife showing her medical treatment with [REDACTED]. The records show that on April 12, 2001, [REDACTED] examined the applicant's wife and diagnosed her with probable bipolar disorder. Dr. [REDACTED] issued a prescription for Depakote. On May 11, 2001, [REDACTED] examined the applicant's wife for scoliosis and osteoporosis. The results of these tests are not indicated in the record. On

September 21, 2001, [REDACTED] examined the applicant's wife and assessed her as having bipolar disorder. Dr. [REDACTED] determined that she should be given an increased dosage of Depakote. On January 2, 2002, [REDACTED] assessed the applicant's wife as having bipolar disorder. Dr. [REDACTED] indicated that she would again increase the dosage of Depakote. On July 18, 2002, [REDACTED] examined the applicant's wife and issued a diagnosis of sinusitis and prescribed Penicillin.

- A copy of the applicant's health insurance card issued through his employer, Ever Ready Pin & Manufacturing, Inc.
- Copies of the following Walgreens pharmacy prescription receipts: a Tramadol prescription for the applicant's wife, dated August 11, 2005; Flovent and Microchamber Unit prescriptions for the applicant's daughters, [REDACTED] and [REDACTED]; and Flovent, Prednisolone and Proventil prescriptions for the applicant's son, [REDACTED]
- An unsigned letter, dated May 12, 2005, from Ever Ready Pin & Manufacturing, which states that the applicant has been working as an Ever Ready Pin employee since March 15, 2004. It states that prior to this date he was employed with Ever Ready Pin through a temporary agency.
- A letter from the applicant, dated June 8, 2005, discussing the hardship his family would endure if he returned to Mexico. The applicant asserts that his family would suffer without him. He states that his wife does not work much because she has health problems. He states that his three children have asthma and allergies. The applicant contends that he could not make much money in Mexico to support a family. He maintains that his family depends on him for support and a roof over their heads.

The applicant indicated, on appeal, that his wife is on medication and has hypoglycemia, ADHD, and is manic depressive. The applicant furnished his wife's prescription receipt for Tramadol, which a pain relieving drug.<sup>1</sup> The applicant also furnished his wife's medical reports from April 2001 until July 2002, showing that she was diagnosed with having Bipolar disorder and prescribed Depakote to treat this condition. Notably, the applicant failed to furnish any documentation related to his wife's is current treatment for Bipolar disorder. Nor has he furnished documentation related to his wife's diagnosis and treatment for hypoglycemia and ADHD. However, the applicant has furnished sufficient documentation of his children's current medical treatment for asthma. The applicant furnished medical reports indicating that his daughters, [REDACTED] and [REDACTED], were diagnosed in December 2005 with moderate persistent asthma and prescribed the drugs Singulair, Albuterol and Flovent. He also furnished pharmacy receipts indicating that in 2005 his son, [REDACTED] was **prescribed Flovent, Prednisolone and Proventil, which are also drugs to treat asthma.**<sup>2</sup> The applicant furnished a copy of his health insurance card issued by his employer, Ever Ready Pin & Manufacturing, Inc., which states that his coverage type is "family." Therefore, if the applicant were to return to Mexico without his wife and children, they would be without any health insurance to cover the cost of their medical treatment.

<sup>1</sup> Mayo Clinic, Drugs and Supplements, Tramadol, <http://www.mayoclinic.com/health/drug-information/DR601787>

<sup>2</sup> American Lung Association, Asthma Medicines Chart, <http://www.lungusa.org/atf/cf/%7B7a8d42c2-fcca-4604-8ade-7f5d5e762256%7D/ASTHMAMEDICINECHART.PDF>.

Furthermore, the applicant indicated, on appeal, that his wife does not work. The record does not show his wife's educational background and recent employment history.<sup>3</sup> However, the record does reveal that even when the applicant's wife was employed in 2004, she was not earning enough to support herself and four children. The United States Census Bureau's 2007 poverty threshold indicates that the federal measure of poverty for a family of five with four children is \$24,366.<sup>4</sup> According to the applicant's 2004 Income Tax Return, his wife had an annual income in 2004 of only \$3,822.19, while he earned \$28,530.95 as an employee of Ever Ready Pin & Manufacturing, Inc. Additionally, the Form I-864, Affidavit of Support, filed on behalf of the applicant by his wife states that during the tax year 2001, the applicant's wife earned \$2,040 and the applicant earned \$28,294.75 under the alias [REDACTED]. Therefore, if the applicant were to return to Mexico without his wife and children, they would likely fall below the 2007 federal measure of poverty.

Notably, the applicant failed to provide any information on the cultural and social hardship his wife and children would suffer if they moved to Mexico. Specifically, there is no information on whether his wife and children are proficient in the Spanish language. Court decisions have found extreme hardship in cases where the language capabilities of the children were not sufficient for them to have an adequate transition to daily life in the applicant's country of origin. For example, *Matter of Kao and Lin*, 23 I&N Dec. 45, 50 (BIA 2001), the BIA concluded that the language capabilities of the respondent's 15-year-old daughter were not sufficient for her to have an adequate transition to daily life in Taiwan. The girl had lived her entire life in the United States and was completely integrated into an American life style. The BIA found that uprooting her at this stage in her education and her social development to survive in a Chinese-only environment would constitute extreme hardship. In *Ramos v. INS*, 695 F.2d 181, 186 (5<sup>th</sup> Cir. 1983), the circuit court stated that "imposing on grade school age citizen children, who have lived their entire lives in the United States, the alternatives of . . . separation from both parents or removal to a country of a vastly different culture where they do not speak the language," must be considered in determining whether "extreme hardship" has been shown.

Nevertheless, country condition reports indicate that the applicant's family would likely suffer medical and financial hardship if they moved with him to Mexico. The applicant stated on his Form G-325A (dated September 17, 2003) that he has been employed with Ever Ready Pin & Manufacturing as a machine operator since September 1998. He indicated in his June 8, 2005 letter that he would not earn enough money in Mexico to support his family. According to the Central Intelligence Agency's *The World Factbook*, Mexico has an unemployment rate of 3.7% plus an underemployment rate of perhaps 25%.<sup>5</sup> *The World Factbook* also indicates that 13.8% of the population is below the poverty line using a food-based definition of poverty, while asset based poverty amounts to more than 40%.<sup>6</sup> This information lends support to the applicant's assertion that it would be difficult for him to support his wife and children if they moved to Mexico with him. Furthermore, it will likely be

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<sup>3</sup> The applicant's wife concurrently filed a Form G-325A with her Form I-130, Petition for Alien Relative, which shows that she was employed with [REDACTED] Pizzeria delivering pizzas from 1997 until 2000.

<sup>4</sup> United States Census Bureau, Poverty, Poverty Thresholds for 2007 by Size of Family and Number of Related Children Under 18 Years, <http://www.census.gov/hhes/www/poverty/threshld/thresh07.html>.

<sup>5</sup> Central Intelligence Agency, *The World Factbook*, Mexico, <https://www.cia.gov/library/publications/the-world-factbook/geos/mx.html>, November 6, 2008.

<sup>6</sup> *Id.*

difficult for the applicant's wife and children to access adequate healthcare in Mexico. The article, "Access to Health Care for Migrants Returning to Mexico," provides:

Access to health care in Mexico is made difficult by the highly fragmented system of providers and insurers. There are several public agencies providing health care that are vertically integrated with individual providers. The Instituto Mexicano del Seguro Social (IMSS) and the Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado (ISSSTE) provide health care to private and public sector workers, respectively. Mexican states maintain their own public hospitals and clinics for those not eligible for health benefits through other public providers such as IMSS and ISSSTE. The Mexican government is also implementing a voluntary health insurance program, the *Seguro Popular*, for those without access to employer-sponsored health insurance. While the *Seguro Popular* is a progressive step towards extending coverage to the uninsured, its effect will be limited by its voluntary nature and restrictions on the extent of health care costs covered.<sup>7</sup>

Therefore, if the applicant's wife and children moved to Mexico, they would have to navigate a complex health care system. It is uncertain whether they would be fully covered by either private or public health insurance.

Based on the totality of the evidence, the AAO finds that the applicant's wife and children would suffer medical and financial hardships that are beyond the hardships normally expected upon the removal of a family member, if the applicant were denied admission to the United States. The AAO therefore finds that the applicant has established that his wife and children would suffer extreme hardship if his waiver of inadmissibility is denied.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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 section 212(h)(1)(B) 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).

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<sup>7</sup> Sara J. Ross, Jose A. Pagan & Daniel Polsky, *Access to Health Care for Migrants Returning to Mexico*, Journal of Health Care for the Poor and Underserved, 124, 125 (2006).

*Matter of Mendez-Moralez*, 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 adverse factors in the present case are the applicant’s May 1, 2002 convictions for *Attempting to Obstruct Justice/Destroy Evidence* (a crime involving moral turpitude) in violation of section 31-4(a) of the Illinois Criminal Code and *Knowingly Damaging Property of less than \$300* in violation of section 21-1(1)(a) of the Illinois Criminal Code. The applicant was sentenced for both of these offenses to a period of conditional discharge for twelve months and ordered to pay a fine of \$300. In addition, the applicant has immigration violations including his initial entry without inspection and periods of unauthorized presence. The favorable factors in the present case are the extreme hardship to the applicant’s wife and four children and the passage of six years since he was convicted of the aforementioned offenses. The applicant’s does not appear to have been arrested for any other criminal offenses. The AAO finds that the crimes committed by the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of 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. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has now met that burden. Accordingly, the previous decision of the Acting District Director will be withdrawn and the application will be approved.

**ORDER:** The appeal is sustained.