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

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date: SEP 30 2008

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(h) and (i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h) and (i).

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant was further 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 waivers of inadmissibility pursuant to sections 212(h) and (i) of the Act, 8 U.S.C. § 1182(h) and (i), in order to remain in the United States and reside with his U.S. citizen wife and child.

The director concluded 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 Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated May 6, 2006.

On appeal, counsel contends that the applicant does not require a waiver, as the inadmissibility provisions of section 212(a) of the Act do not apply in the present matter. *Brief from Counsel*, dated June 29, 2006. Counsel further contends that the applicant has shown that his U.S. citizen wife will experience extreme hardship should the applicant be prohibited from remaining in the United States. *Id.*

The record contains a brief from counsel; budget and employment information for the applicant and his wife; statements from the applicant, the applicant's wife, the applicant's mother-in-law, the applicant's sisters-in-law, and the applicant's friends; documentation of the applicant's mortgage; documentation relating to the applicant's family's automobiles; copies of birth records for the applicant, the applicant's wife, and the applicant's child; a copy of the applicant's marriage certificate; tax records for the applicant and his wife, and; documentation in connection with the applicant's traffic infractions and criminal convictions. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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

- (A)(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.

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

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

The record reflects that the applicant was apprehended on December 1, 1992 in New Orleans, and he presented a fraudulent Form I-551 as evidence that he had a legal immigration status in the United States. Thus, the applicant sought to procure a benefit provided under the Act by fraud or willful misrepresentation, for which he is inadmissible under section 212(a)(6)(C)(i) of the Act.

The applicant was convicted of fraud under section 8 U.S.C. § 1546 in connection with presenting a fraudulent Form I-551. This offense constitutes a crime involving moral turpitude. *See Omagah v. Ashcroft*, 288 F.3d 254 (5th Cir. 2002); *Matter of Sloan*, 12 I&N Dec. 840 (AG 1986).

The applicant was further convicted of failing to stop after a traffic accident under Ohio Revised Statute § 4549.02, for which he received a 180 day jail sentence (170 days suspended), a \$100 fine, and a one-year suspension of his driver's license. However, the record does not support that the applicant's conviction under Ohio Revised Statute § 4549.02 constitutes a crime involving moral turpitude. Conviction documents for the applicant note that the maximum sentence he could have received for his conduct was 180 days in jail and a \$1000 fine. Ohio Revised Statute § 2929.14 reflects that the applicant's conduct was not deemed a felony based on the maximum sentence he could have received. It is noted that there is no intent element for a misdemeanor under Ohio Revised Statute § 4549.02, and the conduct described therein does not clearly constitute morally reprehensible or intrinsically wrong behavior. *See, e.g., Beltran-Tirado v. INS*, 213 F.3d 1179, 1184 (9th Cir. 2000); *Matter of G-*, I&N Dec. 114, 118 (BIA 1956). Yet, as the applicant was convicted of one crime involving moral turpitude, he is inadmissible under section 212(a)(2) of the Act.

Counsel contends that "a waiver of the prior conviction is not required under the holdings of several recent Circuit Court of Appeals decisions." *Brief from Counsel* at 5. **Counsel claims that the inadmissibility**

provisions of section 212(a) of the Act do not apply to adjustment of status cases filed under the LIFE Act, specifically section 245(i) of the Act. *Id.* (citing *Acosta v. Gonzales*, 439 F.3d 550 (9th Cir. 2006); *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004); *Padilla-Caldera v. Gonzales*, 426 F.3d 1294 (10th Cir. 2005)). Counsel has not discussed the authority he cites, or established that the referenced cases from the Ninth and Tenth Circuits reflect that sections 212(a)(6)(C)(i) and 212(a)(2)(A)(i)(I) of the Act do not apply to applicants for adjustment of status under section 245(i) of the Act. Accordingly, counsel has not shown that the inadmissibility provisions under sections 212(a)(6)(C)(i) and 212(a)(2)(A)(i)(I) of the Act do not apply to the applicant.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant or his child experience upon the applicant's deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship regarding the applicant's request for a waiver under section 212(a)(6)(C) of the Act is hardship suffered by the applicant's wife. 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).

Section 212(h)(1)(B) 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. Hardship the applicant himself experiences due to his inadmissibility is irrelevant to section 212(h) waiver proceedings; the only relevant hardship regarding the applicant's request for a waiver under section 212(h)(1)(B) of the Act is hardship suffered by the applicant's wife and child. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h)(1)(B) of the Act.

The applicant is seeking waivers of inadmissibility under sections 212(h)(1)(B) and 212(i)(1) of the Act. As noted above, while hardship to the applicant's child may be properly considered in section 212(h)(1)(B) waiver proceedings, hardship to the applicant's child is not relevant in section 212(i)(1) waiver proceedings. The applicant must obtain a waiver for all grounds of inadmissibility to which he is subject in order to remain in the United States. Thus, in order to remain in the United States, the applicant must meet the standard of section 212(i) of the Act by showing that his wife will suffer extreme hardship, irrespective of hardship experienced by his child.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (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. These factors included 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.

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).

On appeal, counsel contends that the applicant has shown that his U.S. citizen wife will experience extreme hardship should the applicant be prohibited from remaining in the United States. *Brief from Counsel*, dated June 29, 2006. Counsel states that Mexico is foreign to the applicant's wife, and that she would remain in the United States with the applicant's son if the present waiver application is denied. *Id.* at 2-3. Counsel explains that this would separate the family and cause the applicant's wife to live as a single parent. *Id.* at 3. Counsel asserts that family separation is an important consideration in waiver proceedings. *Id.*

Counsel contends that the director erroneously established a bright line test for economic hardship at the poverty line. *Id.* Counsel states that economic hardship can be shown without the need to show that denial of the waiver would push the applicant's wife below the poverty line. *Id.* Counsel contends that the applicant and his wife are living exactly at their means based on their two incomes. *Id.* Counsel explains that removing the applicant's income from his household would have significant economic effects and create hardship for the applicant's wife, reducing her standard of living. *Id.* at 4.

The applicant stated that he and his wife would suffer emotional hardship if he is prohibited from remaining in the United States. *Statement from the Applicant*, dated February 18, 2001. The applicant indicated that he has held stable employment since August 2001, and that his family depends on his economic contribution to the household. *Id.* at 1. The applicant indicated that his mother- and father-in-law depend on him heavily for assistance, and that he sends funds home to his own parents which helps them significantly. *Id.*

The applicant's wife explained that she and the applicant share a close relationship, and they have been married since February 2001. *Statement from Applicant's Wife*, dated February 5, 2002. She stated that the applicant helps her parents and sisters with household chores and related tasks. *Id.* at 1. She lauded the applicant's good character and personality. *Id.* at 1-2. The applicant's wife asserted that she would have to declare bankruptcy should the applicant depart the United States. *Id.* at 2.

The applicant provided statements from his mother-in-law, sisters-in-law, and friends, who all attest to his good characters and helpfulness to the family.

The applicant provided evidence of his family's expenses and assets, including documentation of his employment as of May 26, 2006 and his wife's employment as of January 12, 2001.

Upon review, the applicant has not established that his wife will experience extreme hardship if he is prohibited from remaining in the United States. The applicant and his wife emphasize the economic consequences should the applicant depart the United States. However, the record does not contain recent or otherwise complete information or documentation in order for the AAO to fully assess the economic impact the applicant's departure would have on his wife. The applicant asserts that his income is necessary for his household to meet regular expenses. Yet, while the record suggests that the applicant's wife is employed, the applicant has not provided recent documentation of her current employment or income. While counsel supplemented the record on appeal on June 29, 2006, the most recent documentation of the applicant's wife's employment or income is a letter dated March 16, 2005. Thus, the AAO is unable to determine her current salary or employment status. As of March 16, 2005, the applicant's wife earned approximately \$30,000. *Employment Verification Letter from Riemeier Lumber Company*, dated March 16, 2005.

The applicant provided a budget for his household, yet he has not shown that his wife's monthly expenses are fixed such that costs cannot be reduced through housing or lifestyle changes. The applicant has not shown that he would be unable to secure employment in Mexico to meet his own needs and thus reduce the monthly expenses of his wife in the United States. As noted by the director, the applicant has not established that his wife could not obtain health insurance as a benefit with her current employer.

The AAO acknowledges that the applicant's departure would have a significant financial impact on his wife, requiring changes to her lifestyle. Yet, the applicant has not established that the associated hardship would rise to the level of extreme hardship as contemplated by sections 212(h) and (i) of the Act.

The applicant and his wife express that they are close, and that the applicant's wife would experience emotional hardship should they be separated. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant should she remain in the United States. However, the applicant and his wife have not described psychological factors that are greater than those ordinarily expected of family members separated as a result of inadmissibility. 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). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *Hassan v. INS, supra*, 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 record contains references to hardship the applicant's mother- and father-in-law would endure should the applicant depart and be unable to assist them. Direct hardship to an applicant's mother- or father-in-law is not relevant in waiver proceedings under section 212(i) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. The AAO has considered the possible impact on the applicant's wife should the applicant cease his assistance to her family members. However, the applicant has not shown that the discontinuance of such assistance would have a significant impact on the applicant's wife. The applicant's wife has two other sisters in the United States, and the applicant has not shown that his in-laws are unable to receive any required help from other family members.

Considering all factors of hardship to the applicant's wife, should she remain in the United States without the applicant, the applicant has not shown that she would experience extreme hardship.

Additionally, the applicant's wife may relocate to Mexico with the applicant to maintain family unity if she chooses. Counsel states that the applicant's wife will not relocate to Mexico if the present waiver application is denied. However, the applicant has not presented sufficient explanation or evidence to show that she would experience extreme hardship should she choose to depart the United States.

Pursuant to sections 212(h) and (i) of the Act, in order to establish eligibility for a waiver, an applicant must show that denial of the application “*would* result in extreme hardship.” Sections 212(h) and (i) of the Act (emphasis added). Accordingly, the applicant must show that all of his wife’s options constitute extreme hardship. Thus, in adjudicating an application for a waiver under sections 212(h) or (i) of the Act, Citizenship and Immigration Services (CIS) must consider all hardships to qualifying relatives relating to relocating abroad and remaining in the United States. In the present matter, the applicant has not shown that his wife would experience extreme hardship should she depart the United States.

Based on the foregoing, the instances of hardship that will be experienced by the applicant’s wife should the applicant be prohibited from remaining in the United States, considered in aggregate, do not rise to the level of extreme hardship. 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 sections 212(h) and (i) 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.