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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

H2

[Redacted]

FILE:

Office: HARLINGEN, TEXAS

Date: APR 06 2009

IN RE:

Applicant:

[Redacted]

APPLICATIONS:

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

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.

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).

*Michael Shumway*

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Harlingen, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by presenting a counterfeit Resident Alien Card in someone else's name. The record indicates that the applicant is married to a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his United States citizen spouse and stepdaughters.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated January 24, 2006.

The record includes, but is not limited to, letters from the applicant, his wife, and stepdaughters; a letter from [REDACTED] regarding the applicant's medical condition; and court documents from the Hidalgo County Court, Texas. The entire record was reviewed and considered in arriving at a decision on the appeal.

On November 29, 2005, a Hidalgo County Court judge convicted the applicant of theft, and ordered him to pay \$359.80 in restitution, participate in a theft offender program, and sentenced him to 180 days probation. On May 13, 2006, the applicant completed the theft offender program. The AAO notes that the applicant's theft conviction would have been subject to the petty offense exception; however, on January 22, 1991, the applicant was convicted of attempting to gain illegal entry into the United States by presenting a counterfeit entry document, in violation of 8 U.S.C. § 1325, and was sentenced to ninety (90) days suspended sentence and three years probation. The AAO notes that the applicant's conviction under 8 U.S.C. § 1325 is for a crime involving moral turpitude. *See Omagah v. Ashcroft*, 288 F.3d 254, 261 (5<sup>th</sup> Cir. 2002); *see also Matter of Serna*, 20 I&N Dec. 579, 586 (BIA 1992). Therefore, because the applicant has been convicted of two crimes involving moral turpitude, he is ineligible for the petty offense exception, and he is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for being convicted of two crimes involving moral turpitude.<sup>1</sup>

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<sup>1</sup> The AAO conducts the final administrative review and enters the ultimate decision for USCIS on all immigration matters that fall within its jurisdiction. The AAO reviews each case *de novo* as to all questions of law, fact, discretion, or any other issue that may arise in an appeal that falls under its jurisdiction. Because the AAO engages in *de novo* review, the AAO may deny an application or petition that fails to comply with the technical requirements of the law, without remand, even if the district or service center director does not identify all of the grounds for denial in the initial decision. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th

Section 212(a)(2)(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...
- (ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if—
  - ....
  - (II) the maximum penalty possible for the crime for 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 212(h) of the Act provides, in pertinent part, that:

- (h) 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

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Cir. 1991). The AAO’s de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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.

Additionally, the AAO notes that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by presenting a counterfeit Resident Alien Card in someone else's name. The AAO notes that the applicant has not disputed this inadmissibility on appeal.

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

- (i) In general.-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.
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

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

- (i) (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [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...

In the present application, the record indicates that the applicant initially entered the United States without inspection in June 1987. On an unknown date, the applicant departed the United States. On January 20, 1991, the applicant attempted to enter the United States by presenting a counterfeit Resident Alien Card in someone else's name. On January 22, 1991, the applicant was convicted of attempting to gain illegal entry into the United States by presenting a counterfeit entry document, in violation of 8 U.S.C. § 1325, and was sentenced to ninety (90) days suspended sentence and three years probation. The applicant was deported from the United States and reentered the United States on an unknown date. On April 30, 2001, the applicant's United States citizen wife filed a Form I-130 on behalf of the applicant. On March 3, 2004, the applicant's Form I-130 was approved. On June 23, 2004, the applicant filed an Application to Register Residence or Adjust Status (Form I-485) and a Form I-601. On November 29, 2005, a Hidalgo County Court judge convicted the applicant of theft, and ordered him to pay \$359.80 in restitution, participate in a theft offender program, and sentenced him to 180 days probation. On January 24, 2006, the District Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relative. On May 13, 2006, the applicant completed the theft offender program.

The applicant is seeking a section 212(h) and section 212(i) waiver of the bar to admission resulting from violations of sections 212(a)(2)(A)(i)(I) and 212(a)(6)(C)(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, while a waiver under section 212(i) 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 alien himself experiences upon removal is irrelevant to sections 212(h) and 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen spouse and stepdaughters. 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.

In regards to the applicant's theft conviction, the AAO notes that the Hidalgo County Court judge ordered the applicant's proceedings to be deferred without the entry of judgment of guilt, so long as he completed his probation and the theft offender program. Counsel provided documentation that the applicant successfully completed the theft offender program on May 13, 2006. Even though the applicant completed the theft offender program and received a deferred adjudication of guilt, he has still been convicted of a crime for immigration purposes. Section 101(a)(48) of the Act states that when an alien enters a plea of guilty, or is found guilty, and a formal judgment of guilt is entered by a court, where a judge has ordered some form of punishment, penalty, or restraint on the alien's liberty, there has been a conviction for immigration purposes. Based on the court's minutes, the applicant pled guilty to theft and participation in the theft offender program is a restraint on the applicant's liberty. Additionally, the imposition of costs and surcharges in the criminal sentencing context constitutes a form of punishment. *See Matter of Cabrera*, 24 I&N Dec. 459 (BIA 2008). The applicant is clearly inadmissible under section 212(a)(2)(A)(i)(I) of the Act, for his convictions for theft and using a counterfeit resident alien card.

The applicant's wife states that she will suffer extreme hardship if the applicant is removed from the United States. *Affidavit from San [REDACTED]*, dated February 21, 2006. The applicant's wife states she suffers "from high blood pressure and depression." *Id.* The AAO notes that there was nothing from a doctor indicating exactly what the applicant's wife's medical issues are, any prognosis or what assistance is needed and/or given by the applicant. Additionally, the AAO notes that there was no documentation submitted establishing that the applicant's wife could not receive treatment for her medical condition in Mexico or that she has to remain in the United States to receive medical treatments. Furthermore, the AAO notes that there are no professional psychological evaluations for the AAO to review to determine if the applicant's wife is suffering from any depression or whether any depression is beyond that experienced by others in the same situation. The applicant's wife states the applicant suffers from epileptic seizures. *Id.*; *see also letter from the applicant*, undated. [REDACTED] states the applicant has been suffering from epilepsy since birth; however, since he has been taking anti-epileptic medication, his epilepsy is under control. *See letter from [REDACTED]*, dated February 15, 2006. [REDACTED] states "[i]t is extremely important that [the applicant] continues his anti-epileptic medication and treatment here in the United States. He is to avoid taking anti-epileptic medication from Mexico." *Id.* As mentioned above, hardship the alien himself experiences upon removal is irrelevant to sections 212(h) and 212(i) waiver proceedings. The AAO notes that the applicant's wife made no claim that she could not join the applicant in Mexico, and it has not been established that she has no transferable skills that would aid her in obtaining a job in Mexico. Additionally, the applicant failed to demonstrate whether or not his wife has any family ties in Mexico. The AAO finds that the applicant failed to establish that his wife and stepdaughters would suffer extreme hardship if they accompany him to Mexico.

In addition, the applicant does not establish extreme hardship to his wife and stepdaughters if they remain in the United States. As United States citizens, the applicant's wife and stepdaughters are not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's wife states that if the applicant is removed to Mexico, he will not make enough money to help her with the household expenses and she "would become dependent on Government

Assistance.” *Affidavit from [REDACTED] supra*. The applicant states that he cannot “read and write, so having to find a well paying job in Mexico would be difficult for [him].... If [he] can not [sic] afford to support [himself] in Mexico, it would be impossible to send money back to [his] family in the United States.” *Letter from the applicant, supra*. The AAO notes that there was no documentation submitted that the applicant provides any financial assistance to his wife and stepdaughters. Additionally, beyond generalized assertions regarding country conditions in Mexico, the record fails to demonstrate that the applicant cannot obtain employment in Mexico, or that he will be unable to contribute to his family’s financial wellbeing from a location outside of the United States. 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 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 spouse will endure hardship as a result of separation from the applicant. However, her situation 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 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 sections 212(a)(2)(A) and 212(a)(6)(C) 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.