



U.S. Citizenship  
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[REDACTED]

FILE:

[REDACTED]

Office: PHOENIX, AZ (RENO)

Date: **APR 13 2009**

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:

[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).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The District Director, Phoenix, Arizona, denied the waiver application, and it 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 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 crimes involving moral turpitude. The applicant is the husband of a United States citizen and he is also the father of one United States citizen daughter and two United States citizen step-daughters. He 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 wife, child and step-children.

On July 12, 2004, the applicant filed a Form I-485 Application to Register Permanent Residence or Adjust Status, which the director did not adjudicate because the applicant had been convicted of multiple crimes involving moral turpitude (CIMT's) and was therefore inadmissible. *Letter from the District Director regarding the applicant's Form I-485*, dated July 26, 2006. Because the director found the applicant was inadmissible, he instructed the applicant to submit a Form I-601, Application for Waiver of Grounds of Excludability. However, because the director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative if the waiver was not granted, he denied the Form I-601 application. *Decision of the District Director Denying the Form I-601*, dated January 16, 2007.

On appeal, counsel contends that though the applicant was represented by a previous attorney, that attorney failed to advise the applicant of the necessary supporting documents that he should have filed with his Form I-601. Therefore, current counsel requests that the AAO consider the supporting documents submitted with the appeal. *Letter from counsel*, dated February 14, 2007.

In support of the appeal, counsel submits the referenced letter and the following documents: the applicant's marriage certificate; tax and other financial documents from the applicant and his spouse; birth certificates of the applicant, his United States citizen spouse and daughter; letters from the applicant, his spouse, his child and his two step-children; letters pertaining to the applicant's eye injury and associated ongoing treatment; letters verifying the applicant's former employment; and letters from friends in support of the applicant's character. The record also contains court records regarding the applicant's criminal convictions. The entire record was reviewed and considered in rendering a decision in this case.

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.

- (ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-
- (I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or
  - (II) the maximum penalty possible for the crime of 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).

As was noted, the district director based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act because he determined the applicant had been convicted of multiple CIMT's.

The record reflects that the applicant has been convicted as follows:

- 1) On June 6, 1990, the applicant was convicted by the Justice Court of Wells Township, Elko County, Nevada of a violation of Nevada Revised Statutes (NRS) § 206.310, *Injury to Other Property*, a misdemeanor. As a result of this conviction, the applicant was sentenced to 15 days in jail and was also ordered to make payments in the sum of \$571.33. It is noted that this crime occurred more than 15 years prior to the date of this decision.
- 2) On December 3, 1991, the applicant plead guilty to and was convicted of a violation of NRS § 484.448, *A prior conviction of within 7 years of the charge of DUI*, and was sentenced to serve 10 days in the Elko County Jail and ordered to pay fines totaling \$600.00. It is noted that this crime occurred more than 15 years prior to the date of this decision.
- 3) On January 31, 1992 the applicant was convicted of a violation of NRS §483.560, *Driving without a Valid Driver's License*, a misdemeanor; and also of a violation of NRS § 484.291, *Driving on the Wrong Side of the Highway*, a misdemeanor. As a result of both of these convictions the applicant was ordered to pay fines totaling \$270.00. The applicant was granted his request to perform 45 hours of community service in lieu of

payments. It is noted that this crime occurred more than 15 years prior to the date of this decision.

- 4) On April 13, 1994 the applicant was convicted by the Justice Court of Wells Township of a violation of NRS § 205.240, *Petit Larceny*, a misdemeanor. As a result of this conviction, the applicant was sentenced to ten days in the Elko County Jail and ordered to pay a total of \$355.00 in fines.
- 5) On April 26, 1995 the applicant was convicted by the Justice Court of Wells Township of a violation of NRS § 205.240, *Petit Larceny*, a misdemeanor. As a result of this conviction the applicant was originally sentenced to serve 30 days in jail, which was suspended upon the condition that the applicant not be convicted of additional crimes within the next year period, excluding minor traffic violations. Additionally, the applicant was originally ordered to pay \$900.00 in fines. It is noted that fines were later reduced and the applicant was granted a request to perform community service in lieu of paying fines. However, in September of 1995 the record reflects that the applicant failed to perform those services in full and the applicant was ordered to serve 38 days and five hours in detention.
- 6) On April 26, 1995 the applicant was convicted of a violation of the Municipal Washoe County Code (WCC) 6-5-2B, *Nuisance to Place Waste in a Public Place*, a misdemeanor. The applicant was ordered to pay fines totaling \$75.00 as a result of this conviction.
- 7) On April 28, 1995 the applicant was convicted of a violation of NRS § 483.560, *Driving at a time when Privilege is Revoked for Alcohol Violation*, a misdemeanor. The applicant was sentenced to pay fines totaling \$600.00 and to serve 30 days in the Elko County Jail for that offense.
- 8) On November 29, 2001, the Justice Court of Eastline Township, Elko County, Nevada convicted the applicant of *Receiving, Possessing or Withholding Stolen Property*. This is a violation of the NRS § 205.275, which can result in either a felony or a misdemeanor conviction. In this case the record reflects that the applicant was convicted of a misdemeanor and was ordered to pay fines totaling \$1115.00.

In this case, the applicant has been convicted of two counts of Petty/Petit Larceny, which the Board of Immigration Appeals (BIA) has determined is a crime involving moral turpitude. *Matter of Garcia*, 11 I. & N. Dec. 521 (BIA 1966). *See also, Matter of V-*, 2 I. & N. Dec. 340 (BIA 1940); *Matter of V- I-*, 3 I. & N. Dec. 571 (BIA 1949); *Wilson v. Carr*, 41 F.2d 704 (9th Cir. 1930);

*Matter of Esfandiary*, 16 I. & N. Dec. 659 (BIA 1979); and *Briseno-Flores v. Attorney General*, \_ F.3d \_, 2007 WL 1815477 (3rd Cir. 2007)(alien stole two bottles of rum from grocery store).

The applicant has been convicted of more than one crime involving moral turpitude. Therefore, he does not qualify an exception under Section 212(a)(2)(A)(ii) of the Act. Because the AAO has determined that the applicant has been convicted of at least one crime involving moral turpitude and that he does not qualify for an exception, no purpose would be served in analyzing whether the applicant's other convictions are also CIMT's.

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

(h) 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 . . .

Hardship to the applicant himself is not a permissible consideration under the statute. A section 212(h) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the applicant's United States citizen spouse, daughter and step-daughters. The applicant must establish that his qualifying family members would experience hardship both if the applicant were removed from the United States and they remained in the United States or if they traveled with the applicant to Mexico upon his removal.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of

each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the BIA set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

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).

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).

The record reflects that the applicant's spouse, daughter and step-daughters are qualifying family members in this case. Therefore, the issue in this case is whether the applicant has submitted sufficient evidence to establish that one or more of those qualifying family members would experience extreme hardship if a waiver is not granted.

Counsel does not address whether the applicant's spouse or children would experience extreme hardship if they were to relocate to Mexico in order to remain with the applicant. Because none of the evidence in the record addresses whether the applicant's spouse or her children would experience hardship if they were to relocate to Mexico, the AAO cannot make the determination that they would experience any level of hardship if they were to do so.

The AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. In support of counsel's claim that the applicant's spouse, daughter and step-daughters would experience extreme hardship if they remain in the United States and a waiver is not granted, he submits a letter from the applicant as well as letters from his spouse, daughter, step-daughters and family friends.

In his letter, the applicant states that though he previously had a problem with drinking and "caused a lot of trouble," he has not been detained in five years and he has spent that time trying to be more responsible. He asks that he be allowed to remain in the United States with his wife and daughters. *Extreme hardship letter from* [REDACTED], dated February 9, 2007.

Collectively, the letters from the applicant's spouse<sup>1</sup>, daughter and step-daughters<sup>2</sup>, state that the applicant has sustained an eye injury and that the applicant is an important and loved member of the family. Each qualifying family member emphasizes how difficult their lives would be without the applicant. *Letters from [REDACTED] and [REDACTED]* The applicant's spouse states that though the applicant was not employed at the time she submitted her letter, he did make significant contributions to the household, including making sure the children got to school, taking his daughter to church, helping with meal preparation and house upkeep. *Letter from [REDACTED]* The applicant's daughter and step-daughters, emphasize emotional hardships they would face without a father figure in their lives. *Letter from [REDACTED], and [REDACTED] undated.*

Similarly, letters from the applicant's pastor, friends and family members emphasize the applicant's moral character, and state that the applicant's wife and children would suffer emotionally if the applicant were to be separated from them. *Letter from the Reverend of San Felipe Catholic Church; Letter from [REDACTED]; Letter from [REDACTED]; Letter from [REDACTED]; Letter from [REDACTED]; Letter from [REDACTED]*

Counsel submits letters from [REDACTED] and [REDACTED], who state that it would be difficult for the applicant to relocate to Mexico or any other country with inferior access to eye care physicians because of his debilitating eye condition. *Letter from [REDACTED] dated January 17, 2007; Letter from [REDACTED] dated July 12, 2001.* [REDACTED] and [REDACTED] collectively state that the injury to the applicant's right eye is severe and that he continues to receive medical care for eye care needs for both of his eyes. *Id.*

However, as was previously noted, hardship to the applicant himself cannot be considered under the statute. This injury and this ongoing care can only be considered to the extent that it would impact the applicant's qualifying family members, who did not refer to this injury in their respective letters or otherwise state that it would contribute to any hardships they might experience if a waiver is not granted.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse or children would face extreme hardship if a waiver is not granted. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse or parent is removed from the United States. The letters from the applicant's spouse, daughter, step-daughter and friends show that the applicant has loving and devoted family members who are extremely concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social

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<sup>1</sup> The letter from the applicant's spouse is dated February 6, 2007

<sup>2</sup> The letters from the applicant's daughter and two step-daughters are not dated.

interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of “*extreme hardship*,” Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

However, U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

In this case, while counsel has established that the applicant has qualifying family members, he has failed to discuss whether either the applicant or his qualifying family members have family ties outside the United States. No country conditions information was submitted and the record is silent regarding whether the applicant’s qualifying family members would experience hardship if they were to relocate to Mexico. Though financial documents were submitted, the applicant’s spouse states in her letter that the applicant was not employed at the time she submitted that letter. *Letter from* [REDACTED]. Therefore, the AAO cannot conclude that there would be a significant impact on the family’s finances if the applicant were to relocate to Mexico. Further, though counsel did submit evidence regarding the applicant’s eye condition, he did not submit evidence that medical care for that condition was unavailable in Mexico, nor did he state how this condition would contribute to hardship the applicant’s qualifying family members would experience if the applicant were to be removed from the United States. Therefore, based on the evidence in the record the AAO cannot find that the applicant’s qualifying family members would experience extreme hardship either if they were to relocate to Mexico with the applicant or if they were to be separated from him and remain in 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 § 212(h), the burden of proving eligibility remains entirely with the applicant. *See* § 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.