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Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

H2

FILE: [REDACTED] Office: LOS ANGELES (SAN BERNARDINO) Date: FEB 09 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).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director Services, Los Angeles, California, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant, [REDACTED], is a native and citizen of Mexico who was found inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i), for committing a crime involving moral turpitude.

The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so as to remain in the United States with his U.S. citizen spouse and stepson. The District Director Services concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director Services*, dated April 5, 2006. The applicant filed a timely appeal.

The AAO will first address whether the applicant was convicted of a crime involving moral turpitude.

In the Superior Court of California, County of San Bernardino, the applicant pled guilty to the following:

- Misdemeanor battery on spouse/cohabitaing/noncohab former spouse, etc. in violation of Cal. Penal Code section 243(E)(1) - February 13, 2002;
- Misdemeanor inflict corporal injury on spouse/cohabitant in violation of Cal. Penal Code section 273.5(A) - December 5, 2001;
- Misdemeanor criminal threats in violation of Cal. Penal Code section 422 - December 5, 2001;
- Cal. Vehicle Code section 23152(A) - April 24, 2003;
- misdemeanor disorderly conduct:intox drug/alcohol - October 27, 2000.

Section 212(a)(2) of the Act states 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 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines “conviction” for immigration purposes as:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

With regard to determining whether a crime involves moral turpitude, the Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992):

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general.

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required *mens rea* may not be determined from the statute, moral turpitude does not inhere.

With regard to the conviction under Cal. Penal Code § 273.5(A)<sup>1</sup> for inflicting corporal injury on spouse/cohabitant involved moral turpitude, the Ninth Circuit held that violation of Cal. Penal Code § 273.5(A) involves moral turpitude. *See, Grageda v. INS*, 12 F.3d 919, 922 (9th Cir.1993) (“Because spousal abuse is an act of baseness or depravity contrary to accepted moral standards, and willfulness is one of its elements, we hold that spousal abuse under section 273.5(a) is a crime of moral turpitude.”)

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<sup>1</sup> Cal Penal Code 273.5. provides:

(a) Any person who willfully inflicts upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child, corporal injury resulting in a traumatic condition, is guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year . . .

(b) Holding oneself out to be the husband or wife of the person with whom one is cohabiting is not necessary to constitute cohabitation as the term is used in this section.

(c) As used in this section, "traumatic condition" means a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by a physical force.

As the applicant's conviction under Cal. Penal Code § 273.5(A) involves moral turpitude, and the crime does not qualify for the petty offense exception provided for under section 212(a)(2)(A)(ii) of the Act, the AAO need not consider whether the applicant's other convictions involve moral turpitude, and the record, therefore, establishes the applicant's inadmissibility under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for committing a crime of moral turpitude.

The AAO will now consider whether granting the applicant's section 212(h) waiver is warranted.

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 -

...

(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 . . .

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case are the applicant's U.S. citizen spouse and stepson. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

On appeal, counsel states that the additional evidence of the applicant's marriage certificate, his son's birth certificate and school behavior reports, his wife's declaration dated June 1, 2006, an In-Home Support Services (IHSS) provider summary, a Fontana Unified School District Psycholoeducational Report, and a letter by Social Security Administration support the claim of extreme hardship to the applicant's wife and stepson. Counsel states that the IHSS document demonstrates that the applicant's wife is paid to provide care for the applicant, and counsel describes the content in the declaration of the applicant's wife, the psycholoeducational report, and other evidence. Counsel indicates that a letter from the physician of the applicant's stepson is forthcoming and is the strongest evidence in support of the waiver application.<sup>2</sup>

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<sup>2</sup> The AAO notes that the evidence in the record is sufficient to establish the condition of the applicant's step-son.

The AAO notes that the record also contains financial records, letters from the applicant's doctor, [REDACTED], indicating that the applicant has a psychotic disorder, medical records pertaining to the applicant, and a document dated August 20, 2008 and an undated letter by the applicant's wife.

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 applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant's spouse must be established in the event that she joins the applicant, and alternatively, if she remains in the United States without the applicant. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

In a document dated August 20, 2008 the applicant's wife states that she wants the applicant to be deported because he had sex with another woman in their truck and with a woman at a bar. The applicant's wife states that the applicant claims that he will kill her if she does not accept him. And in an undated letter received by Citizenship and Immigration Services (CIS) on November 26, 2008, the applicant's wife states that the applicant has caused damage to her and her 10-year-old son. She states that pictures were taken of the applicant having sex in her truck and behind bars, and that her son saw the applicant having sex with another woman. She states that when she showed one of the pictures to the applicant he placed a gun to her head in front of her son and threatened her and her son if they would tell anyone. She states that she and her son are getting very sick because of the applicant's abuse and asks that the applicant be removed from the country.

In rendering this decision, the AAO has considered all of the evidence in the record.

The AAO finds that these recently received letters, combined with the applicant's conviction for corporal injury to a spouse, establish that the applicant's spouse would not experience extreme

hardship were he to be removed from the United States. It is clear that the applicant's spouse does not wish to have contact with the applicant.

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 section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.