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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

tlz

[Redacted]

FILE:

[Redacted]

Office: ATLANTA

Date:

JUN 08 2009

IN RE:

[Redacted]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i), and 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, Atlanta, Georgia denied the instant waiver application that 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, the spouse of a U.S. citizen, the father of three U.S. citizen children, and the beneficiary of an approved Form I-130 petition. The district director found the applicant inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The district director also found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and, therefore, denied the application. The applicant now seeks waiver of inadmissibility in order to remain in the United States with his wife and children.

On appeal, counsel contended that the evidence demonstrates that denial of the waiver application would result in extreme hardship to the applicant's wife and children. Although counsel did not appear to contest the district director's determination of inadmissibility, the AAO will review that determination.

Section 212(a)(6)(C)(i) of the Act provides:

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.

The applicant was arrested, on June 27, 2000, for possession of a forged instrument in the third degree. On May 31, 2001, the applicant, then using the name [REDACTED], was convicted of that crime in the Circuit Court of Colbert County, Alabama, pursuant to his plea of guilty. The applicant was fined and sentenced to twelve months confinement. Imposition of the sentence of incarceration was suspended.

Alabama Code § 13A-9-7, the statute that defines the crime of possession of a forged instrument in the third degree, states,

A person commits the crime of criminal possession of a forged instrument in the third degree if he possesses or utters a forged instrument of a kind covered in Section 13A-9-4 with knowledge that it is forged and with intent to defraud.

The statute further states that possession of a forged instrument in the third degree is a Class A misdemeanor. Pursuant to Alabama Code § 13A-5-7, a class A misdemeanor is punishable by incarceration for a maximum of one year and a fine of no more than \$2,000, or both.

The record contains no indication that the applicant presented the forged instrument to a Federal official while seeking an immigration benefit. To form the basis for excludability under section 212(a)(6)(C)(i), fraud or willful misrepresentation of a material fact must be made to an authorized official of the United States Government. See *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of Shirdel*, 19 I & N Dec. 33 (BIA 1984); *Matter of L-L-*, 9 I & N Dec. 324 (BIA 1961).

Matter of Y-G-, 20 I&N Dec. 794(BIA 1994). The applicant is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, and the district director's decision is withdrawn as to that issue.

However, the record contains an additional issue that was not addressed in the decision of denial. Section 212(a)(2)(A) of the Act states, in pertinent part:

(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 . . . [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 . . . 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).

An essential element of the crime to which the applicant pleaded guilty is “intent to defraud.” Without exception, federal and state courts have held that a crime in which fraud is an element necessarily involves moral turpitude. *Jordan v. De George*, 341 U.S. 223, 227 (1951).

The applicant's birth certificate and other evidence in the record show that the applicant was born on August 31, 1955. As such, he was over 18 years old when he was arrested on June 27, 2000.¹ The applicant was sentenced to a period of incarceration greater than six months for his conviction. Notwithstanding that the sentence of conviction was suspended, rather than executed, that sentence precludes treatment of the applicant's crime as a petty offense pursuant to section 212(a)(2)(A)(ii)(II) of the Act.

¹ The record shows that he was arrested on June 27, 2000, but does not state when the crime occurred. The applicant has not presented evidence, however, showing that he had not reached the age of 18, which occurred on August 31, 1973, at the time he committed the crime.

The AAO finds that because he was convicted of a crime involving moral turpitude when he was over 18 years old, and does not qualify for the single petty offense exception, the applicant is inadmissible pursuant to section 212(a)(2)(A) of the Act. The balance of this decision will pertain to whether waiver of that inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

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

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

(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

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 (BIA1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a nonexclusive list of 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).

A waiver of inadmissibility under section 212(h) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully

resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's wife and children are the only qualifying relatives in this case. If extreme hardship to a 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).

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 contains a notarized letter, dated November 7, 2002, from the applicant's wife. She stated that without the applicant her family's life would be incredibly difficult, that the children would miss their father, and that she would feel great grief at the separation of the family. She stated that, in addition to the emotional trauma her family would suffer financial hardship. She stated that her income would be insufficient to meet the family's expenses.

The record contains a budget showing monthly expenses of \$1,808.72, which equates to annual expenses of \$21,704.64. Documents from finance companies confirm the amounts shown for monthly payments for two cars. A document from a mortgage lender shows that the applicant's family pays a monthly mortgage payment of \$420.98, whereas the budget provided shows a payment of \$436. The budget indicates that the applicant's family pays \$32 per month for cable television service. The budget does not include any payment for insurance, although an insurance bill shows a payment of \$342.52 for six months of automobile insurance, which equates to \$57.09 per month.

The record contains an unsigned note, dated June 10, 2005, from the applicant. In that letter the applicant stated that one of his daughters is a slow learner and requires special help with her schoolwork, which he provides daily, in addition to spending time with his other children. He also stated that he provides his family with a stable income, that his family has approximately 14 years remaining on their mortgage, that he does the grocery shopping, laundry, and cooking for his family, that he participates with his children in school and church activities and provides transportation for them, and that his children are very sad and upset that he may be deported.

An unattributed chart, dated June 10, 2005, in the record indicates that the applicant's mother still lives in Mexico, as do a half-sister and half brother of the applicant. The record also contains a statement, dated June 13, 2005, from the applicant. In it, he stated,

I have no social or political contacts to apply for work in Mexico. I would be limited to tending animals. I cannot support my family on this type wage.

The record contains one page of the 1998 Form 1040A U.S. Individual Income Tax Return of the applicant's wife, filing as head of household. That return shows that she had total income of \$19,950 during that year. A 1998 Form W-2, Wage and Tax Statement (W-2 form), confirms that the applicant's wife earned that amount during that year. Although the applicant indicated, on a G-

325 Biographic Information form, that he and his wife married during 1994, the 1998 return does not show that the applicant contributed to the family's support during that year.

The record contains the 1999 Form 1040A U.S. Individual Income Tax Return of the applicant's wife, again filing as head of household. That return shows that she had total income of \$19,007 during that year. A 1999 W-2 form confirms that the applicant's wife earned that amount during that year. That return does not show that the applicant contributed to the family's support during that year.

The record contains the 2000 Form 1040A U.S. Individual Income Tax Return of the applicant's wife, again filing as head of household. That return shows that she had total income of \$20,602 during that year. A 2000 W-2 form shows that the applicant's wife earned \$2,083.40 during that year. The provenance of the remainder of the income she reported is unknown to the AAO. That return does not show that the applicant contributed to the family's support during that year.

The record contains the joint 2001 Form 1040A of the applicant and his wife, showing that they declared \$26,163 in total income during that year. The record contains three W-2 forms showing wages equal, in the aggregate, to that amount. One of those W-2 forms shows that the applicant's wife earned \$19,399.44 during that year. The other two W-2 forms show that the applicant earned a total of \$6,764.13 during that year.

The record does not contain tax returns or W-2 forms for 2002 or 2003.

The record contains the joint 2004 Form 1040A of the applicant and his wife, showing that they declared total income of \$44,584 during that year. The record contains a W-2 form showing that the applicant earned \$24,373.86 during that year, and that the applicant's wife earned \$20,209.65 during that year.

The record contains a letter, dated September 26, 2002, from [REDACTED], the controller at the applicant's place of employment. [REDACTED] stated that, through that date in 2002, the applicant had worked 1,378.50 regular hours and taken 44.75 vacation hours, and earned \$12,811.50. [REDACTED] further stated that the applicant has worked for that company since August 27, 2001, and, from that date to the end of that year, earned \$6,032.88.

The record contains an almost identical letter, dated November 1, 2002, from a supervisor at the applicant's place of employment. [REDACTED] subscribed to that letter as notary. The supervisor stated that the applicant has worked for that company since August 27, 2001, and, from that date to the end of that year, earned \$6,032.88. The supervisor further stated that during 2002 through October 20, the applicant had worked 1,692.25 regular hours and taken 51.25 vacation hours, thus earning \$15,691.50.

The record contains a letter, dated June 10, 2005, from [REDACTED]. That letter is primarily a character reference, but also states that the applicant's children need him.

Another letter, dated June 13, 2005, from the applicant's employer's general manager, is a character reference, and does not address the hardship that failure to grant the waiver application would cause to the applicant's wife or children.

A comparison of the figures on the September 26, 2002 and November 1, 2002 letters from the applicant's employer indicates that, from September 26, 2002 to November 1, 2002, a period of six weeks, the applicant allegedly earned wages for 313.5 hours of work and 6.5 hours of vacation time, for a total of 320 hours, the equivalent of eight weeks.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with independent objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

On appeal, counsel stated that the applicant has continuously resided in the United States for 14 years, and that most of his family also resides in the United States, including his wife and children. Counsel stated that the applicant provides the primary financial support for his children, and finding a job in Mexico would be difficult because he is 50 years old, the economic conditions in Mexico are difficult, and the applicant has not lived in Mexico for a long time.

Counsel stated that both of the applicant's daughters have health problems with their feet that require expensive medication. In support of that assertion counsel provided a notarized statement, dated June 20, 2005, from the applicant's wife. That document lists expenditures in irregular amounts for this unidentified cream, allegedly used to treat an unspecified foot problem. The payment schedule shows that, from January to May of 2005 the applicant's family paid almost \$1,000 for foot cream, and that in May alone they paid over \$500 for that cream. That document is a sworn assertion by the applicant's wife, rather than a contemporaneous record of the asserted purchases. The applicant's wife did not reveal the source of the information in that affidavit, that is, how she was able to recall the exact amounts of nine purchases, ranging from \$45.52 to \$203.52, of which no two were the same, over four and one-half months. Further still, no evidence was submitted to suggest that a medical doctor prescribed the foot cream at issue.

The evidence of financial hardship is insufficient. The evidence that the applicant's family spent the amounts shown for foot cream is insufficient, as is the evidence that the foot cream was medically necessary. The record contains no supporting evidence that any member of the applicant's family has any medical problems.

Further, the record indicates that the applicant's wife was self-supporting without the applicant's assistance from 1998 to 2000, three of the five years for which evidence was presented. During 2001 the applicant made only a modest contribution to family income. No evidence was presented pertinent to 2002 and 2003. Only during 2004 does the applicant appear to have greatly contributed to family income. Those tax returns do not support counsel's assertion on appeal that the applicant provides the primary financial support for his children.

Further, although the budget presented shows that the applicant's family's expenses exceeded the applicant's wife's individual income, the record does not demonstrate that those expenses will not be reduced by the applicant's departure, or that they might not be otherwise reduced without creating hardship.

The record does not demonstrate that, if the applicant were removed to Mexico, his family could not continue to live in the United States without incurring financial hardship, which, when considered with other hardship factors, rises to the level of extreme hardship.

The applicant stated that he provides daily homework assistance to one of his daughters; that he does the grocery shopping, laundry, and cooking for his family; and that he participates with his children in school and church activities; and provides transportation for them. The record contains no evidence that those tasks could not be accomplished by another family member.

The applicant further stated that his children are very sad and upset that he may be deported. The applicant's wife indicated that her children would miss their father and that she would feel grief at the separation of her family.

The record demonstrates 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 affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or 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 made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than the normal, expected hardship involved in such cases.

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 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th 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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang, 450 U.S. 139 (1981)* (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The applicant stated that he would be unable to locate employment in Mexico other than tending animals, and that the wages from such a position would not enable him to support his family. Counsel stated that the applicant would be difficult because of his age, because of the poor economic conditions in Mexico, and because of the applicant's long absence from Mexico.

No evidence was provided, however, to support any of those assertions by the applicant and counsel. Further, although the applicant stated that he has no "social or political contacts" in Mexico, evidence in the record indicates that he has family there. The record contains no evidence, nor even an assertion, that they would be unable, or unwilling, to offer the applicant some degree of assistance. The evidence provided is insufficient to demonstrate that the applicant's family could not accompany him to live in Mexico without incurring extreme hardship.

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 faces extreme hardship if the applicant is refused admission. Rather, the record suggests that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.