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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**

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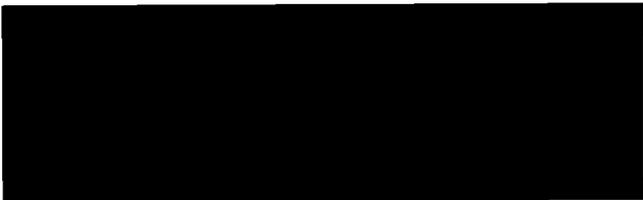
FILE:  Office: SANTA ANA, CALIFORNIA

Date: APR 19 2010

IN RE: Applicant: 

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:



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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santa Ana, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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)(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 record indicates that the applicant is the son of a lawful permanent resident of the United States and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 United States citizen children.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on his qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated April 30, 2007.

On appeal, the applicant, through counsel, asserts that “[t]he Adjudicating Officer applied the wrong standard in this case.” *Form I-1290B*, filed May 23, 2007. The AAO notes that it appears the Field Office Director may have applied the standard for a waiver under section 212(i) of the Act; however, it is irrelevant since the applicant has met the requirements for a waiver under section 212(h) of the Act.

The record includes, but is not limited to, counsel’s brief, letters from the applicant and his girlfriend, documents regarding the applicant’s daughter’s medical condition, articles on special education in Mexico, and court dispositions for the applicant’s arrests and convictions. The entire record was reviewed and considered in arriving at a decision on the appeal.

In the present application, the record indicates that the applicant initially entered the United States in February 1990 without inspection. On March 17, 1994, the applicant’s lawful permanent resident father filed a Form I-130 on behalf of the applicant’s mother. On April 15, 1994, the applicant’s mother’s Form I-130 was approved. On December 17, 1998, the applicant was convicted of forgery of checks, acquiring an access card with intent to defraud, using another’s credit card, and fraudulent use of an access card; and was sentenced to ten (10) days in jail and three (3) years probation. On August 29, 2000, the applicant’s father filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On March 23, 2001, the applicant was convicted of battery on a cohabitant/spouse/fiancé&fiancée, and was sentenced to one (1) day in jail, community service, and three (3) years probation. On October 20, 2004, the applicant was convicted of corporal injury inflicted upon a family member resulting in a traumatic condition, and was sentenced to community service and four (4) years probation. On September 12, 2006, the applicant’s Form I-130 was approved. On March 28, 2007, the applicant filed a Form I-601. On April 30, 2007, the Field Office Director denied the applicant’s Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relative.

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.

The Field Office Director found the applicant inadmissible for having been convicted of crimes involving moral turpitude. The applicant, through counsel, has not disputed this determination on appeal. The AAO has reviewed the statutes, case law and other documents related to these convictions, as well as the relevant precedent decisions from the Board of Immigration Appeals (Board) and the courts. The AAO concurs with the Field Office Director that the applicant has been convicted of crimes involving moral turpitude and is therefore inadmissible under section 212(a)(2)(A)(i) of the Act.

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 [her] 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 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 [her] discretion, and pursuant to such terms, conditions and procedures as [she] 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.

The applicant is seeking a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(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. Hardship the alien himself experiences upon removal is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen children and lawful permanent resident father. 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 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.

The AAO finds that the applicant meets the requirements for a waiver of his grounds of inadmissibility under section 212(h)(1)(B) of the Act, in that the applicant's children would suffer emotional and financial hardship as a result of their separation from the applicant. In a brief filed May 23, 2007, counsel states the applicant "provides both emotional and sole financial support for [his daughter, ██████████] in addition to caring for her daily needs." In a declaration dated March 22, 2007, the applicant states his daughter "suffers from a severe neurological disorder. She is unable to walk or talk." The AAO notes that the applicant's daughter was diagnosed with lissencephaly and seizure disorder. In a multidisciplinary team developmental evaluation dated February 25, 2005, the examiners stated that the applicant's daughter has "at least 1 seizure every day" and she takes daily medication. Additionally, the applicant's daughter has "minimal voluntary movement of upper limbs" and attends rehab twice a week. Counsel states that the applicant's removal from the United States "would result in the loss of the family home and the inability for ██████████ to receive her required care and supervision." The applicant states that "[w]ith consistent effort, ██████████ has improved. The mother of [his] child and [he] have made ongoing efforts to help improve ██████████ condition."

The AAO acknowledges that there will be the normal hardships of relocating a family outside the United States; however, the hardship suffered by the applicant's daughter will be extreme because of her disability. The applicant states "[t]he special education and medical treatment which [his daughter] presently receives is generally unavailable in Mexico." In the article, Mexico Makes Special Education Mandatory & Recognizes Sign Language, the author indicates that "Mexico has recently approved a new law which specifically addresses the rights of persons with disabilities." However, in regards to education for children, the article states there will be new special library services provided and the

creation of new boarding facilities and regular schools for deaf children. The AAO notes that there is no indication that children with disabilities like the applicant's daughter would greatly benefit from this new law. In the article, Special Education in Mexico, the author states "Mexico has struggled to provide for the educational needs of children with disabilities." "Mexico has developed an emphasis on including children with disabilities in the general education classrooms and within the community." The AAO notes that the applicant's daughter is currently attending a specialized school for severely handicapped students in California, where she can receive individualized attention. Additionally, the applicant's daughter has been receiving medical treatment at Children's Hospital of Orange County since she was an infant.

The applicant states he is "the sole financial support for the family. [His] wife has been unable to find work due to her immigration status. Without [his] financial support, [his] wife would be unable to care for [their] children." In an undated letter, [REDACTED] states the applicant has been "the head of the household for the last 8 years." [REDACTED] further states that she stays home to care for their special needs child and it would be very hard for her to find work in the United States. The AAO notes that the record establishes that the applicant is the primary source of support for his children. In *Matter of Recinas*, 23 I&N Dec. 467, 469-70 (BIA 2002), the respondent was "a single mother of six children, four of whom are United States citizens.... The respondent is divorced from the father of her United States citizen children...[and] there is no indication that he remains actively involved in their lives." The respondent's four United States citizen children were entirely dependent on their single mother for support, which is similar to the applicant's situation in this case, in that his family is financially dependent on him. The Board held that "the heavy financial and familial burden on the adult respondent, the lack of support from the children's father, the United States citizen children's unfamiliarity with the Spanish language," and other factors, "render the hardship in this case well beyond that which is normally experienced in most cases of removal." *Id.* at 472.

The AAO finds that if the applicant were removed from the United States, his children, especially his disabled daughter, would suffer extreme hardship staying in the United States without their father, the primary wage earner, or joining their father in Mexico. The AAO notes that the applicant does not have employment in Mexico, and there is no indication in the record that he could find work quickly to continue to care for his family and provide for his disabled daughter. Additionally, the applicant's children are incapable of maintaining their wellbeing in the absence of the applicant.

In regards to his criminal activity, counsel asserts that "the punishment for the crimes committed strongly suggests that the underlying acts did not involve danger nor violence as the total jail time imposed for all of the offenses was one day. [The applicant] was placed on informal probation and ordered to receive counseling." Counsel further claims that "even if the crimes committed here are deemed to fall within the purview of the Attorney General's regulation, there can be little doubt but that the removal of [the applicant] would impose extraordinary and unusual hardship upon his United States children." The AAO notes that counsel is referring to 8 C.F.R. § 212.7(d), which places limits on United States Citizenship and Immigration Service's (USCIS) discretion in cases of violent and dangerous crimes. 8 C.F.R. § 212.7(d) provides:

The [Secretary], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

It is noted that the terms "violent" and "dangerous" are not further defined in the regulation, and the AAO is aware of no other precedent or guidance defining those crimes considered "violent or dangerous" and those that are not. The AAO therefore looks to the plain meaning of the terms "violent" and "dangerous." Black's Law Dictionary, Seventh Edition (1999), defines violent as "of, relating to, or characterized by strong physical force" and dangerous as "likely to cause serious bodily harm." It is noted that a violation of the California battery statute requires a "willful and unlawful use of force of violence upon the person or another." *See* California Penal Code § 242. Additionally, the California corporal injury statute requires that a traumatic condition occur to the victim. *See* California Penal Code § 273.5. The language of the statutes shows that the applicant's crimes can be "characterized by strong physical force" or "likely to cause serious bodily harm." Consequently, the AAO finds that the applicant's convictions for battery and corporal injury are both violent and/or dangerous, within the meaning of 8 C.F.R. § 212.7(d), and therefore the heightened discretionary standards found in that regulation are applicable in this case.

The AAO finds that not only has the applicant established extreme hardship to his disabled United States citizen daughter, he has established his removal to Mexico would result in exceptional and extremely unusual hardship to her. As previously discussed, the applicant is the primary source of support for his children, especially since their mother has no legal immigration status in the United States. Additionally, the applicant's daughter is attending a specialized school for severely handicapped students and she has been receiving all her medical treatments at Children's Hospital of Orange County since she was an infant.

The favorable factors presented by the applicant are the extreme hardship to his United States citizen children, who depend on him for emotional and financial support; and the lack of any other criminal convictions since his last conviction in 2004. The AAO notes that counsel's brief and a declaration from the applicant indicate that the applicant has become a responsible father. Additionally, the record establishes that the applicant attended counseling for his domestic battery convictions and he completed his probation for the December 17, 1998 convictions. The record of proceeding does not establish that the admission of the applicant to the United States would be "contrary to the national welfare, safety, or security of the United States."

The unfavorable factors presented in the application are the applicant's convictions for forgery of checks, acquiring an access card with intent to defraud, using another's credit card, and fraudulent use of an access card on December 17, 1998; battery on a cohabitant/spouse/fiancé&fiancée on March 23, 2001; and corporal injury inflicted upon a family member resulting in a traumatic condition on October 20, 2004; and periods of unauthorized presence and employment. The AAO notes that the applicant has not been convicted of any criminal violations since his last conviction and the applicant's crime occurred more than 5 years ago, demonstrating the applicant's rehabilitation.

While the AAO does not condone his actions, the AAO finds that the favorable factors outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter and the Filed Office Director's denial of the I-601 application is withdrawn.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the application is approved.