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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



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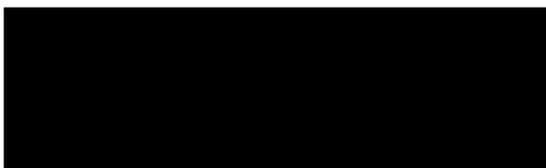
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California, and 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. He is also inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission into the United States by willful misrepresentation. He seeks waivers of inadmissibility in order to reside in the United States with his U.S. citizen mother and son.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601 application for a waiver accordingly. *Decision of the Field Office Director*, dated March 12, 2008.

On appeal, counsel for the applicant asserts that the field office director made factual and legal errors in his decision, and that the applicant has shown that his son and mother will experience extreme hardship if the present waiver application is denied. *Brief from Counsel*, dated June 7, 2008.

The record contains, but is not limited to: a brief from counsel; a psychological evaluation of the applicant's son; documentation in connection with the applicant's mother's social security benefits; documentation relating to the applicant's and his sister's employment; statements from the applicant and his mother; a medical letter for the applicant's mother; documentation in connection with the applicant's son's academic activities; tax records for the applicant, his sister, and his parents; and documentation in connection with the applicant's criminal convictions. The entire record was reviewed and considered in rendering this decision.

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

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.

In a sworn statement executed on November 27, 2001, the applicant stated that he attempted to enter the United States in 1988 by presenting a U.S. birth certificate and claiming to be a citizen of the United States. He was not admitted, and was permitted to voluntarily return to Mexico. Accordingly, the applicant attempted to procure admission into the United States by willful misrepresentation, he is inadmissible under section 212(a)(6)(C)(i) of the Act, and he requires a waiver under section 212(i) of the Act.

On appeal, counsel contests whether the applicant was correctly found inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude. Inadmissibility under section 212(a)(2)(A)(i)(I) of the Act may be waived pursuant to the requirements of section 212(h) of the Act. In order to establish that he is admissible and eligible to

adjust his status to lawful permanent resident, the applicant must obtain waivers of all grounds for which he is inadmissible. As the record clearly shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, the AAO will first assess whether he meets the requirements for a waiver under section 212(i) of the Act before analyzing his criminal history and eligibility for a waiver under section 212(h) of the Act.

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

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 Attorney General [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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of deportation, removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment

after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “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.” *Id.*

We observe that the actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. See, e.g., *In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate).

The applicant stated that he has six brothers and two sisters who are all lawful permanent residents or citizens of the United States, yet he has no family in Mexico. He indicated that he fears his mother and son will suffer extreme hardship if he departs the United States, including financial and emotional consequences. He asserted that his mother retired due to hypertension, and she has been diagnosed with Lumbar Compression Fracture which causes her constant back pain. He provided that his mother takes medication for her conditions, she sees a spine specialist every two months, and she has been advised to remain within one hour of a hospital. He stated that he helps his mother with her expenses and medication.

The applicant’s mother stated that she has been unemployed since 2003 and that the applicant assists her financially. She noted her medical conditions, and indicated that the applicant assists her with her medication. She asserted that he would be unable to help her should he relocate to Mexico due to the fact that wages are low. She expressed that she will endure emotional hardship if the applicant is not able to realize his goals in the United States and she must reside apart from him. She noted that the applicant’s son would lack access to comparable academic opportunities in Mexico.

In a statement issued in 2002, the applicant’s mother provided that she has eight sons and daughters, but that the applicant is the only son who has been able to help her. She stated that she and the applicant visit each other “once and then,” and that he can afford to visit and call her. She asserted that the applicant will be unable to visit her if he returns to Mexico. She noted that she does not have medical insurance.

Upon review, the applicant has not shown that his mother will suffer extreme hardship should the present waiver application be denied. The record supports that the applicant's mother has been diagnosed with hypertension and Lumbar Compression Fracture, and that her physician recommended further treatment and that she remain within an hour of a hospital. It is evident that these conditions have an emotional and physical impact on the applicant's mother. However, the applicant has not shown that his mother in fact relies on his assistance, or that she lacks assistance from other relatives. The record reflects that the applicant resides in Sylmar, California, yet his mother resides approximately 275 miles away in Las Vegas, Nevada. The applicant noted that he has eight siblings who reside in the United States, and the record shows that at least one of his sisters resides in North Las Vegas, Nevada. Counsel references the applicant's stepfather, which suggests that his mother may also benefit from assistance from her husband.

The applicant's mother asserts that the applicant assists her financially. However, the applicant has not provided documentation to support this contention. Nor has he provided an account of his mother's expenses such to show whether she has unusual economic needs. The applicant has not shown that his mother is unable to receive financial assistance from his eight siblings should she require it, or that her husband lacks income to meet their needs.

The applicant's mother expresses that she will suffer emotional hardship should the applicant depart the United States. The AAO acknowledges that the separation of family members due to inadmissibility often results in significant emotional difficulty, and that the applicant's mother wishes to continue to have the applicant in the United States. However, the applicant has not provided sufficient explanation or evidence to distinguish his mother's emotional difficulty from that which is commonly expected. It is noted that the applicant's mother has a husband and eight other children in the United States who may be available to support her emotionally.

The applicant's mother expressed concern for the applicant's son's experience in Mexico should he relocate there with the applicant. The applicant's son is not a qualifying relative under section 212(i) of the Act, yet the AAO has examined the applicant's mother's statements and related evidence to determine the impact hardship to the applicant's son will have on her. The record supports that the applicant's son will face challenges should he reside in Mexico. However, the applicant's mother only referenced her concern for the applicant's son's academic opportunities in Mexico. The record does not show that challenges endured by the applicant's son will raise his mother's emotional difficulty to an extreme level.

The applicant has not asserted that his mother will suffer hardship should she relocate to Mexico. In the absence of clear assertions from the applicant, the AAO may not speculate regarding hardships the applicant's mother may face. In proceedings regarding a waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361.

Considering the stated hardship factors in aggregate, the applicant has not shown that denial of the present waiver application “would result in extreme hardship” to his mother. Thus, he has not shown that he is eligible for a waiver under section 212(i) of the Act.

Counsel asserts that the field office director made factual and legal errors, and that the applicant is not inadmissible for committing a crime involving moral turpitude. However, the applicant has not provided sufficient records of his criminal history in order to determine whether he has been convicted of a crime involving moral turpitude. On June 7, 1980, the applicant was charged with assault with a deadly weapon under California Penal Code § 245 for assaulting an individual with a knife. The record does not show whether he was convicted of this charge. Assault with a deadly weapon is a crime involving moral turpitude. *Matter of Logan*, 17 I&N Dec. 367 (BIA 1980). Further, the applicant was convicted of at least one offense of driving under the influence, Felony Drunk Driving under California Vehicle Code § 23152(A) or (B) for which he was sentenced to two years of incarceration. While simple DUI has not been deemed to be categorically a crime involving moral turpitude, a driving under the influence conviction can be found to be turpitudinous when aggravating circumstances are present. *See Matter of Lopez-Meza*, 22 I&N Dec. 1188 (BIA 1999). The record lacks sufficient documentation of the applicant’s criminal history to determine whether he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

However, as the applicant is not eligible for a waiver under 212(i), no purpose would be served in conducting further analysis of his criminal history and eligibility for a waiver under section 212(h) of the Act. Nor would a purpose be served in discussing whether he merits a waiver as a matter of discretion.

As noted above, in proceedings regarding a waiver of grounds of inadmissibility under sections 212(i) and 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.