

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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**



**PUBLIC COPY**

H2



Date: MAR 12 2012

Office: HARLINGEN, TX

FILE: 

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:

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,

f. Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting Field Office Director, Harlingen, Texas, 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)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of crimes relating to a controlled substance. The director indicated that the applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director concluded that the applicant had failed to establish extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel states that the applicant has two U.S. citizen children and lawful permanent resident parents, and they will suffer extreme emotional and physical hardship if the applicant is deported. Counsel indicates that the applicant's young son has hyperactivity developmental delay, speech delay, and hearing loss and attends in special classes. Counsel maintains that the applicant's mother depends on the applicant, particularly for taking medication and for transportation to medical appointments. Counsel declares that the applicant's father states that the applicant will not be able to support himself, much less his children, in Mexico as jobs do not pay more than \$75 per week.

Section 212(a)(2) of the Act states in pertinent part:

Criminal and related grounds. —

(A) Conviction of certain crimes. —

(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 —

...

(II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

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

The Attorney General may, in his discretion, waive the application of . . . subparagraph (A)(i)(II) . . . insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if . . . in the case of an immigrant who is 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 that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully permanent resident spouse, parent, son, or daughter of such alien.

The record of conviction shows that in 2004, the applicant was convicted of possession of five grams of a controlled drug, marijuana, in California. The applicant's controlled substance offense is therefore eligible for the waiver under section 212(h) of the Act as it relates to a single offense of simple possession of 30 grams or less of marijuana.

The applicant's father and mother convey in their affidavits dated August 5, 2009 that they have a close relationship with their son. The applicant's mother indicates that she has health problems and depends on the applicant to take her to medical appointments and to ensure medication compliance. The applicant's father expresses concern about his son being able to support himself and his young children in Mexico.

The asserted hardship factors in the instant case are emotional and financial in nature. The medical record dated April 27, 2009 conveys that the applicant's son takes medication for hyperactivity developmental delay, has speech delay, uses hearing aids for hearing loss, and attends special education classes. Additionally, the applicant's father's statement about employment in Mexico is consistent with the submitted U.S. Department of State report indicating the predominance of low-wage jobs in Mexico and the minimum daily wage not providing a decent standard of living for a worker and family. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices – 2008: Mexico*, 9-10 (February 25, 2009). Moreover, the report stated that “[t]he education system fell short of providing special education for children with disabilities, serving approximately 400,000 students of an estimated two million with disabilities in 2004.” *Id.* at 9. The evidence of the applicant's employment in the United States shows that he has held menial, low-paying jobs as a laborer. Thus, it is probable that the applicant will lack favorable employment options in Mexico. Further, it is not likely that the applicant will have the financial resources for his son to attend special education classes comparable to those he now attends.

However, in regard to the asserted hardships of remaining in the United States without the applicant, the record reflects that the applicant's children have not been living with their father in Edinberg, Texas. They are being raised by their mother in Alamo, Texas. Additionally, the applicant provided no evidence of the amount of financial support, if any, that he provides his children. We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation.

A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from

separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

Because the applicant is statutorily ineligible for relief, no purpose is 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 establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden.

**ORDER:** The appeal is dismissed. The waiver application is denied.