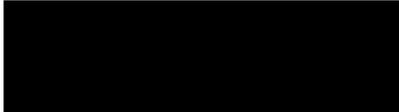




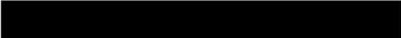
U.S. Citizenship
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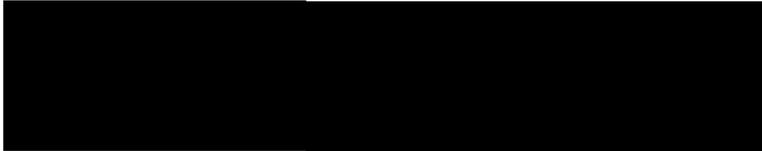
Date: **NOV 06 2012** Office: SAN ANTONIO, TX

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink that reads "Michael Shimmy".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of Mexico who was found to be inadmissible to the United States under 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 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). The director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), concluding that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative and that a favorable exercise of discretion was warranted.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (USCIS) abused its discretion by giving improper weight to the negative and positive factors in the applicant's case. Counsel contends that the applicant expressed remorse for his crimes, which were committed after the death of the applicant's child and while the applicant was young. Counsel argues that the applicant has a good job with benefits, owns a home, supports his family, and helps his in-laws. Counsel asserts that the applicant established extreme hardship to his U.S. citizen wife, and USCIS erred by failing to find that the hardship factors in their totality are beyond the hardships normally associated with removal. As to hardship, counsel declares that if the applicant's wife relocated to Mexico, she would have no family ties to Mexico, be forced to separate from her family members *and oldest son in the United States, endure violence and possibly be victimized because of having lived in the United States, have few job prospects due to their limited education, have diminished availability of medical care, and have emotional distress in regard to adapting to life in Mexico and in witnessing her children, who do not speak Spanish, adjust to life in Mexico.* As to remaining in the United States while the applicant relocated to Mexico, counsel states that the applicant's wife *would endure extreme emotional and financial hardship in having to raise four U.S. citizen children on her own while also taking care of her parents.* Counsel asserts that the applicant's wife is depressed, lacks the confidence to drive a vehicle, and is distraught about her children.

The AAO will first address the finding of inadmissibility.

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 —
 - (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) 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.

On March 24, 2003, the applicant pled guilty to and was convicted of attempted theft in violation of Cal. Penal Code §§ 664-484(a). The judge imposed a suspended sentence and placed the applicant on six-month summary probation, and ordered that he serve four days in jail.

On March 3, 2004, the applicant pled guilty to and was convicted of theft in violation of section 484(a) of the Penal Code of California. The judge imposed a suspended sentence and placed the applicant on 24-month summary probation, and ordered that he serve four days in jail, make restitution, and stay away from WalMart.

On June 23, 2003, the applicant pled guilty to possession of a controlled substance. The judge deferred entry of judgment, and found there was a factual basis for the plea and accepted the plea. The sentence was suspended and the applicant was placed on deferred entry of judgment for 18 months. On December 22, 2004, the applicant was convicted of the offense. On August 26, 2005, deferred entry of judgment was reinstated by the judge. On April 24, 2006, the applicant was found by the judge to have successfully completed the deferred entry of judgment program and the case was dismissed pursuant to Cal. Penal Code § 1000.3. Section 1000.3 of the California Penal Code provided that “[i]f the defendant has performed satisfactorily during the period in which deferred entry of judgment was granted, at the end of that period, the criminal charge or charges shall be dismissed.”

On March 3, 2004, the applicant pled nolo contendere to and was convicted of theft in violation of section 484(a) of the California Penal Code. The judge imposed a suspended sentence and placed the applicant on a 24-month summary probation, and ordered that he serve four days in jail, stay away from WalMart, and make restitution.

On September 14, 2004, the applicant pled nolo contendere to and was convicted of petty theft, prior conviction, in violation of Cal. Penal Code § 666. The judge imposed a suspended sentence and placed the applicant on a 36-month summary probation, and ordered that he serve six days in jail, stay away from Target Stores, and make restitution.

On March 21, 2006, the judge dismissed in furtherance of justice pursuant to section 1385 of the Penal Code of California the charge of possession of under one ounce of marijuana in violation of section 11357(B) of the Health and Safety Code of California.

On January 7, 2008, the applicant pled nolo contendere to and was convicted of petty theft, prior conviction, in violation of Cal. Penal Code § 666. The judge imposed a suspended sentence and placed the applicant on three-year summary probation, and ordered that he serve sixty days in jail, stay away from WalMart, and make restitution.

The director determined that the applicant was inadmissible for having been convicted of a crime involving moral turpitude, and noted that the applicant failed to submit his criminal records for the arrest for theft on February 29, 2004, for burglary on July 13, 2007, and for petty theft prior conviction on February 4, 2008. Although the director provided a list of the applicant's arrests and convictions, it is not clear which, if not all, of the applicant's convictions were found to be crimes involving moral turpitude. However, as the applicant has not disputed inadmissibility on appeal, and the record does not show the finding of inadmissibility to be erroneous, we will not disturb the finding of the director.

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is found under section 212(h) of the Act. That section 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. 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).

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 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *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.*

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., Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In rendering this decision, the AAO will consider all of the evidence in the record

The asserted hardships in remaining in the United States without the applicant are emotional and financial in nature. In the letter dated September 13, 2007, the applicant asserted having a close

relationship with his wife and children and as improving his life since meeting his wife. The applicant asks to be forgiven for his wrongful conduct and states that he wants to provide a future for his family, and for his daughter who will soon be born. Letters by the applicant's wife and in-laws, as well as the evaluation by [REDACTED], are in agreement with the claim that the applicant has a strong bond with his wife and U.S. citizen children, who were born on [REDACTED] and [REDACTED] and with his U.S. citizen stepson, who was born on [REDACTED]. In the evaluation dated October 8, 2009, [REDACTED] asserted that the applicant's wife is distressed that separation from the applicant will have an adverse impact on her 13-year-old son, and she will no longer have financial support from the applicant. [REDACTED] contended that the applicant's wife has symptoms of depression, and without the applicant by her side her prognosis will be grim. The applicant's mother-in-law stated in the undated letter that she and her husband bought a house in San Antonio for the applicant and her daughter, and she and her husband, who works and has high blood pressure and diabetes, live in their own house. The applicant and his wife pay a monthly mortgage of \$560, and invoices are in the record for household expenses such as utilities. Submitted wage statements reflect the applicant's wife as earning \$8 per hour in 2009, and the applicant as earning \$15 as an iron worker. The submitted financial records support the assertion that the applicant's wife requires her husband's income for their livelihood. When the asserted hardship factors are considered together, we acknowledge that the applicant's wife will experience extreme hardship if she remained in the United States and raised her young children while the applicant lived in Mexico.

The declared hardships in joining the applicant to live in Mexico are bad air quality in Mexico and its harmful effect on [REDACTED], who has asthma; not being able to afford medical care for [REDACTED] and their newborn; anxiety about exposing their children to the crime and violence in Mexico; not being accustomed to daily life in Mexico; concern about her children's lack of knowledge of Spanish, anxiety that the education her children will receive in Mexico will be inferior to what is available to them in the United States; not having permission to have her oldest son relocate to Mexico; lack of family ties to Mexico; separation from family members in the United States; and no job prospects due to their limited education. Medical records reflect that the applicant's son was seen by a doctor for asthma on January 7, 2008 and April 28, 2009. However, no documentation has been submitted that in support of the claim that Mexico has bad air quality (and how it will affect the applicant's son), that healthcare in Mexico will be unaffordable, that education will be inferior to what is available to them in the United States, that they will be subjected to a high level of crime and violence in Mexico and victimized for having come from the United States, that they will have no job prospects due to their lack of education and skills, and that the oldest son will not be allowed by his biological father to live in Mexico. There is no evidence that the applicant's wife needs to take care of her parents, as her father is able to work for a living. We recognize that the applicant's children will experience hardship because they do not speak Spanish, and that they and the applicant's wife will be separated from family members in the United States and from their former lifestyle. However, when the asserted hardships are considered together, they fail to demonstrate that the hardship to the applicant's wife will be more than the common result of inadmissibility or removal and, thus, extreme.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even

where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relatives in this case.

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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.