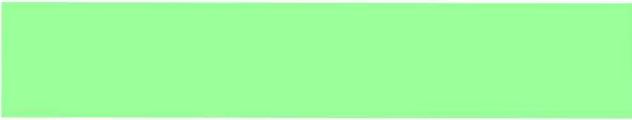


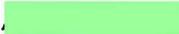


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAR 04 2013** Office: LOS ANGELES, CA

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under 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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application is approved.

The applicant is a native and citizen of Mexico. 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 U.S. citizen spouse and four U.S. citizen children. In a decision, dated March 11, 2000, the field office director found the applicant to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The field office director concluded that the applicant had failed to establish that his inadmissibility would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated April 8, 2009, counsel asserted that the field office director failed to adequately evaluate the hardship to the applicant's U.S. citizen child, relied on case law that has been long overruled, and failed to consider hardship in the aggregate.

In a decision, dated February 17, 2012, the AAO found that the applicant had established that his spouse and children would suffer extreme hardship as a result of separation, but did not establish that they would suffer extreme hardship as a result of relocation.

On motion, counsel submits evidence of the applicant having an additional three U.S. citizen children. He also submits additional evidence in regards to the hardship that the applicant's spouse and children would suffer as a result of relocation. Counsel does not dispute the finding of inadmissibility.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

- (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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

The Board of Immigration Appeals (Board) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

On or about May 17, 2000, the applicant was charged with misdemeanor theft under California Penal Code (CPC) § 484(A) and burglary under CPC § 459. On May 19, 2000 the burglary charge was dismissed and the applicant pled guilty to the theft charge. The applicant was given three years of probation and served three days in jail. In addition, on or about April 17, 2006 the applicant was charged with Infliction of Corporal Injury on a Spouse under CPC § 273.5(A) and with Battery Against a Former Spouse/Fiancée under CPC § 243(E)(1) for events that occurred on or about March 1, 2006. On September 5, 2006, the charge under § 273.5(A) was dismissed and the applicant was convicted under CPC § 243(E)(1). The applicant was sentenced to one day in jail and given three years of probation. At the time of the applicant's conviction, battery was defined under CPC § 242 as the, "willful and unlawful use of force or violence upon the person of another."

On appeal, we found that the applicant's conviction for theft under CPC§ 484(A) was categorically a crime involving moral turpitude. In regards to his conviction under CPC § 243(E)(1), we did not disturb the field office director's finding of moral turpitude because the record was incomplete, failing to indicate whether the crime resulted in serious harm to the victim, and the applicant did not contest this finding of inadmissibility. We noted that if the applicant's conviction under CPC § 243(E)(1) involved serious harm, it may be considered a violent crime and the applicant may be subject to the heightened discretionary standard under 8 C.F.R. § 212.7(d). We note now that a statement from the applicant's spouse, dated March 1, 2012, does not indicate that she was harmed during the incident, and that it was her sister who called the police. Based on the evidence, we conclude that the conviction was based on no more than an offensive touching and is not a crime involving moral turpitude.

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . 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 waiver of inadmissibility under section 212(h) 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, parent, son or daughter of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse and four children are the qualifying relatives 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 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. *Salcido-Salcido v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998)(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.

On appeal the record of hardship included: counsel's brief, a statement from the applicant's spouse, tax documents for the applicant and his spouse, family photographs, joint documents between the applicant and his spouse, evidence of familial ties to the United States, and medical records for the applicant's daughter.

On appeal, counsel claimed that the applicant's spouse and child would suffer emotional, financial, and in the applicant's daughter's case, medical hardship as a result of the applicant's inadmissibility. Counsel claimed that the applicant's spouse will suffer emotional and financial hardship as a result of having to support two households and care for the couple's daughter in the event of separation. Tax documentation and other financial documentation in the record indicated that the applicant and his spouse were living at or below the poverty guidelines in 2004 and 2005 as set by the Department of Health and Human Services. We note that on motion, counsel has submitted evidence that the applicant now has four U.S. citizen children, exacerbating the potential hardships as a result of separation. Thus, we found and continue to find that given the applicant's and his spouse's combined income being at or below the poverty level, and the presence of four minor children in the relationship, it would be extreme financial and emotional hardship for the family to separate.

In the event of relocation, counsel stated that the applicant's spouse would suffer hardship because of the country conditions in Mexico and that she is not likely to find employment in Mexico due to her education level. Counsel claimed that the applicant's daughter would suffer emotionally in the event of separation because she would lose the support of her father during the formative years of her childhood and medically as a result of relocation because she suffers from asthma and will not be able to access adequate health care in Mexico. On appeal, we found that the record included no documentation to support any claims made in regards to country conditions in Mexico including economic issues, safety issues, or problems with the standards of medical care in the country. We found that the record also failed to establish that medical care in Mexico would be insufficient to treat the applicant's daughter's condition.

On motion, counsel submits country conditions information for Mexico, documentation regarding the birth of the applicant's additional children, a medical document for the applicant's daughter, a

statement from the applicant's spouse, a statement from the applicant's daughter, and a letter from a police sergeant regarding the applicant serving as an informant.

The record now indicates, through a letter dated March 12, 2012, from the [REDACTED] Department, that for several years the applicant has been serving as a valuable and reliable source of information leading to the seizure of large quantities of narcotics, the proceeds from narcotics sales, and the arrest and prosecution of individuals involved in narcotics activities in the United States and Mexico. The letter asserts that because of his involvement with law enforcement, if the applicant were to return to Mexico, there is a high probability that he would be killed or seriously injured. The letter states further that the police department would like to resume using the applicant as an asset and source of information. The record includes numerous news articles detailing the violence in Mexico as a result of drug trafficking in support of the statements regarding potential harm to the applicant. We now find that given the conditions in Mexico, the applicant's involvement with aiding law enforcement in the United States, the family's economic situation, and the existence of four minor children in his family, that relocation would be an extreme hardship for the applicant's spouse and children.

The unfavorable factors in the applicant's case include the applicant's record of two criminal convictions and his unlawful residence in the United States.

The favorable factors in the applicant's case include: his family ties to the United States, the extreme hardship his family would face if he were denied a waiver of inadmissibility, the fact that the applicant has no criminal record since 2006, his service to his community as a police informant, and, as evidenced by statements from his wife and daughter, his role as a loving husband and father.

The AAO finds that the crimes committed by the applicant cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the motion will be granted and the underlying application is approved.

ORDER: The motion will be granted and the underlying application is approved.