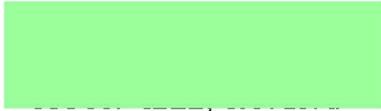




U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **MAR 08 2013**

Office: SAN BERNARDINO, CA

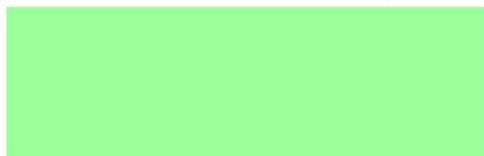
FILE:

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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, San Bernardino, 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 committed a crime involving moral turpitude. The applicant's spouse and two children are U.S. citizens and his mother is lawful permanent resident. He seeks a waiver of inadmissibility in order to reside in the United States.

The field office director found 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. *Field Office Director's Decision*, dated October 14, 2011.

On appeal, counsel asserts that the field office director abused her discretion in denying the application and misapplied the standard of extreme hardship. *Form I-290B*, received November 14, 2011.

The record includes, but is not limited to, counsel's brief, statements from family member of the applicant, medical records, educational records and country conditions information on Mexico. The entire record was reviewed and considered in arriving at a decision on the appeal.

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 (BIA) 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.)

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a “realistic probability, not a theoretical possibility,” that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where, at the time of the proceeding, an “actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien’s own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude.” *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, “the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude.” 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709. However, this “does not mean that the parties would be free to present any and all evidence bearing on an alien’s conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself.” *Id.* at 703.

The record reflects that the applicant was convicted of felony evading a peace officer with wanton disregard for safety in violation of California Vehicle Code Section 2800.2(A) on July 20, 2003, and he was sentence to 16 months imprisonment. As the applicant has not contested his inadmissibility on appeal, and the record does not show that determination to be in error, we will not disturb the finding of inadmissibility under section 212(a)(2)(A) of the Act.

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 section 212(h)(1)(B) 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 on the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. In the present case, 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 the qualifying relatives, the applicant's spouse, children and mother. 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, the AAO considers the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

Counsel states that: the applicant’s spouse has been suffering from severe migraine headaches and has sought medical attention for them; she has received injections and medication for her headaches; her headaches have led to spells of nausea and vomiting; she suffers from anxiety and depression; a country study by the Library of Congress shows that the healthcare system in Mexico is inadequate to meet the needs of its inhabitants; it is unlikely that the applicant’s family would be able to obtain the same care that they currently require, or that they could afford it if available; the U.S. Department of State has issued a travel warning for Mexico, specifically warning about crime, violence and drug trafficking organizations; the applicant’s spouse’s anxiety would increase as she would be worried about her and her children’s safety; the applicant’s spouse and children would be separated from their family in the United States and all of their family lives in the United States; the applicant’s mother has all of her siblings and children in the United States; the applicant’s children would be traumatized by starting a new life in a new surrounding; they have been raised in the United States and his son [REDACTED] is extremely introverted; it is unlikely that the applicant could provide for his family’s needs in Mexico without family support; asset based poverty in Mexico is more than 47% according to the CIA; the applicant’s children would be deprived of educational opportunities; and the Library of Congress information reflects that the educational system is unable to meet the needs of its inhabitants.

The applicant’s spouse’s medical records reflect tension headaches, migraine headaches, rebound headaches, phonophobia and photophobia with migraines, nausea and dizziness; and her records reflect that she has been prescribed medication and injections. The applicant’s mother’s medical records reflect shoulder and carpal tunnel issues. The record includes country conditions information on Mexico related to safety, financial and education issues. The record includes educational records for the applicant’s children.

The record reflects that the applicant's spouse's family ties are in the United States and that she does not have family ties in Mexico. The AAO notes her serious medical issues and that she would be raising two children in a foreign country, and it notes the loss of educational opportunities for her children. The record includes evidence of safety issues. Considering these issues, and the normal hardships created by relocation, the AAO finds that the applicant's spouse would experience extreme hardship upon relocating to Mexico.

Counsel states that: the applicant has been with his spouse for 13 years; his spouse depends on him for emotional support; they have two children together; she fears for her life without the applicant and how she will cope with the children; her fear and anxiety has led to depression and her stress and depression has led to physical symptoms; she has not been sleeping or eating well since receiving news of the applicant's possible removal; she has been suffering from severe migraine headaches and has sought medical attention for them; she has received injections and medication for her headaches; her headaches have led to spells of nausea and vomiting; their children are worried about the applicant leaving and separation could cause catastrophic psychological trauma; their child [REDACTED] is expressing feelings of guilt; his spouse's negative state is affecting their children; she has been unable to control her crying fits in front of the children; she is worried about the safety of the applicant; the U.S. Department of State has issued a travel warning for Mexico; the applicant is the main provider for the family; the applicant's spouse would be forced to find employment and pay for child care; and she could not afford her medical care without the applicant. The applicant's spouse details her emotional hardship upon separation and makes claims similar to counsel. The applicant's children detail their closeness to the applicant.

As mentioned, the applicant's spouse's medical records reflect tension headaches, migraine headaches, rebound headaches, phonophobia and photophobia with migraines, nausea and dizziness; and her records reflect that she has been prescribed medication and injections. Her records reflect that she has been experiencing anxiety symptoms, sleeping issues and depression symptoms related to the applicant's immigration case and she was diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood. The record includes paystubs for the applicant's spouse and her 2009 tax return reflects an income of over \$32,000. The record includes an employer letter for the applicant.

Counsel states that the applicant's mother is legally disabled and has severe anemia; she is receiving blood transfusions; and she worries that the applicant will not be able to care for her.

The record reflects that the applicant's spouse would experience significant psychological hardship without the applicant and she has serious medical issues. She would be raising their children without him, who themselves would be experiencing hardship. Her safety concerns for the applicant are noted. The record is not clear as to the level of financial hardship that she would experience. Considering these issues, and the normal hardships created by separation, the AAO finds that the applicant's spouse would experience extreme hardship if they remained in the United States.

As the AAO has found extreme hardship to the applicant's spouse, it will not make a determination for the other qualifying relatives.

In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300 (citations omitted).

The favorable factors include the presence of the applicant's U.S. citizen children and spouse and lawful permanent resident mother, extreme hardship to his spouse, hardship to this mother and children, and statements in support of the applicant's character.

The adverse factors in the present case are the applicant's entry without inspection, unauthorized period of stay, criminal issues and unauthorized employment.

The record reflects that the applicant was convicted of driving under the influence of alcohol or drugs in violation of California Vehicle Code Section 23152(a) on March 30, 1998. The record reflects that the applicant was convicted of driving under the influence of alcohol or drugs in violation of California Vehicle Code Section 23152(a) on February 9, 1999. The record reflects that the applicant was convicted of riding a bicycle under the influence of alcohol or drugs in violation of California Vehicle Code Section 21200.5 on May 27, 1999.

The record reflects that the applicant was convicted in relation to a February 11, 2000 arrest under California Penal Code Section 647(f) for disorderly conduct and false identification to a police officer under California Penal Code Section 148.9. The record reflects that the applicant was convicted of driving under the influence of alcohol or drugs in violation of California Vehicle Code Section 23152(a) on November 6, 2000. The record reflects that the applicant was convicted of

(b)(6)

driving under the influence of alcohol or drugs in violation of California Vehicle Code Section 23152(a) and felony evading a peace officer with wanton disregard for safety in violation of California Vehicle Code Section 2800.2(A) on July 20, 2003, and he was sentence to 16 months imprisonment.

The applicant was convicted of driving under the influence of alcohol or drugs with priors in relation to a December 1, 2005 arrest. He was convicted on November 3, 2008 of driving with a suspended license for driving under the influence in violation of California Vehicle Code Section 14601.2(a). The applicant's numerous and recent crimes, coupled with a lack of evidence concerning efforts to obtain treatment or otherwise overcome what appears to be a substance abuse problem, reflects that the applicant has not been rehabilitated and poses a danger to society.<sup>1</sup>

The applicant admitted probation violations during hearings on February 9, 1999, May 27, 1999, November 6, 2000, March 12, 2003, May 30, 2003 and August 31, 2005. He also failed to appear for court cases on four occasions in 2000.

The AAO finds that taken together, the adverse factors in the present case outweigh the favorable factors, such that a favorable exercise of discretion is not warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. See section 291 of the Act. Here, the applicant has not met that burden. Accordingly, the appeal will dismissed.

**ORDER:** The appeal is dismissed.

---

<sup>1</sup> As we deem the conviction rendering the applicant inadmissible to be a dangerous crime, to warrant a favorable exercise of discretion he must also meet the requirements of 8 C.F.R. § 212.7(d).