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U.S. Citizenship
and Immigration
Services

Date: OCT 07 2013

Office: SAN ANTONIO

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Administrative Appeals Office (AAO) previously denied the applicant's appeal in a decision dated November 6, 2012. The matter is now before the AAO on motion. The motion 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 Field Office Director, San Antonio, Texas, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), concluding that the applicant had failed to establish that denial of admission would impose extreme hardship on a qualifying relative and that a favorable exercise of discretion was warranted. *Decision of Field Office Director*, dated August 13, 2010.

The applicant filed a timely appeal with the AAO. In our decision on appeal, we noted that the applicant had not contested the director's finding that he was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude, so we did not disturb that finding. We also found that the applicant had established that his spouse would experience extreme hardship if she were to remain in the United States without the applicant. However, we noted that the applicant could not meet his burden of establishing extreme hardship to a qualifying relative for purposes of a waiver under section 212(h) of the Act unless he also showed that his spouse would suffer extreme hardship upon relocation to Mexico. We concluded that the applicant had failed to submit sufficient evidence to demonstrate extreme hardship to his spouse on relocation. Therefore, we found that the applicant had not shown eligibility for a waiver, and we dismissed his appeal accordingly. *Decision of AAO*, dated November 6, 2012.

On motion, filed December 5, 2012 and received by the AAO on July 15, 2013, the applicant claims that he supports his wife and four children and that his younger brother recently moved in with him. He states that his work permit recently expired and he has been unable to renew it, so his family has been experiencing financial difficulties. He also asserts that his spouse does not have a driver's license and that his family relies on him on a daily basis. He notes that other family members will also be affected if his waiver application is denied. He states that he is a hard worker, has learned from his mistakes, has lived in the United States since he was five years old, and has established a life here with his family. He requests reconsideration of his case.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that the decision was based on an incorrect application of law or Service policy. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the motion.

On motion, the record contains updated statements from the applicant and his spouse; a power of attorney document granting custody of the applicant's younger brother to the applicant's spouse; tax returns, mortgage records, pay stubs, and other financial documentation; educational and medical records relating to the applicant's children; photographs of the applicant and his family; and letters of support from the applicant's family members.

Section 212(h) of the Act states, 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

We have long held that we can find 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 can easily be made for purposes of the waiver even where there is no intention to separate in reality. *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 such 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).

The AAO finds that the applicant has failed to meet the requirements of a motion. As noted above, we previously found that the applicant's spouse would suffer extreme hardship upon separation from the applicant but indicated that the applicant must also show extreme hardship to his spouse upon relocation. The applicant does not dispute this portion of our finding. Therefore, the only issues on motion are whether the applicant has shown that his spouse would suffer extreme hardship if she were to relocate to Mexico, and whether the applicant has demonstrated that he merits a waiver in the exercise of discretion. However, on motion the applicant again focuses on the hardship his spouse and other family members would experience if they were separated from him. He emphasizes that his family depends on him in the United States for financial and emotional support and other assistance, but these issues were handled on appeal. He has not provided any new evidence regarding hardship his qualifying relatives might face in Mexico, nor has he alleged that the AAO erred in finding that his spouse would not experience extreme hardship in Mexico.

(b)(6)

NON-PRECEDENT DECISION

Page 4

The applicant has failed to state new facts on motion or to establish that the AAO's prior decision was based on an incorrect application of law or Service policy. 8 C.F.R. § 103.5(a)(2) and (3). As his motion does not meet the requirements of a motion, it must be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion is dismissed.