

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

H3



FILE: [REDACTED] Office: MEXICO CITY Date: JUN 15 2009

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City. The matter 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)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant was further found inadmissible under 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 applicant seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(h) of the Act in order to enter the United States and reside with his U.S. citizen wife and child.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen wife and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated June 5, 2006.

On appeal, the applicant's wife contends that she will experience hardship if the applicant is not permitted to return to the United States. *Statement from the Applicant's Wife*, dated July 2005.

The record contains statements from the applicant's wife and mother-in-law; copies of birth records for the applicant, the applicant's wife, and the applicant's daughter; a copy of the applicant's marriage certificate; documentation relating to the applicant's criminal history; medical documentation for the applicant's wife; and information regarding the applicant's unlawful presence in the United States. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

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

- (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.

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

- (h) The Attorney General [now Secretary, Homeland Security, “Secretary”] may, in his discretion, waive the application of subparagraphs (A)(i)(I) [or] (B) . . . of subsection (a)(2)

. . . if -

- (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –
 - (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien’s application for a visa, admission, or adjustment of status,
 - (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
 - (iii) the alien has been rehabilitated; or
- (1) (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 [now the Secretary of Homeland Security (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

The record reflects that the applicant entered the United States without inspection in or about 1968. He remained until he voluntarily departed in or about October 2003. Accordingly, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions took effect, until October 2003, totaling over 6 years. He now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by his wife on his behalf. He was deemed inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure.

The record further shows that the applicant pleaded guilty to injury to a child under Texas Penal Code § 22.04(a)(3) on July 17, 1995. The documentation of the applicant's plea specifies that the crime is a third degree felony with a maximum possible sentence of 10 years incarceration. There is ample support that the applicant's conviction for injury to a child constitutes a crime involving moral turpitude. *See, e.g., Garcia v. Attorney General of United States*, 329 F.3d 1217, 1222 (11th Cir. 2003). Thus, the applicant was properly found inadmissible under 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 applicant does not contest his inadmissibility on appeal.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Section 212(h)(1)(B) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship to the U.S. citizen or lawfully resident spouse, parent, or child of the applicant. Hardship the applicant experiences due to his inadmissibility is not a basis for a waiver under section 212(h) on the Act; the only relevant hardship regarding the applicant's request for a waiver under section 212(h)(1)(B) of the Act is hardship suffered by his wife and daughter. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h)(1)(B) of the Act.

The applicant is seeking waivers of inadmissibility under sections 212(h)(1)(B) and 212(a)(9)(B)(v) of the Act. As noted above, while hardship to the applicant's child may be properly considered in section 212(h)(1)(B) waiver proceedings, hardship to the applicant's child is not a basis for a waiver in section 212(a)(9)(B)(v) proceedings. The applicant must obtain a waiver for all grounds of inadmissibility to which he is subject in order to remain in the United States. Thus, in order to remain in the United States, the applicant must meet the standard of section 212(a)(9)(B)(v) of the Act by showing that his wife will suffer extreme hardship, irrespective of hardship experienced by his daughter.

On appeal, the applicant's wife contends that she will experience hardship if the applicant is not permitted to return to the United States. *Statement from the Applicant's Wife*, dated July 2005. She expresses that the applicant is a good husband, father, and friend, and that he assists her. *Id.* at 1. The applicant's wife states that she has had difficulty meeting her economic needs, and that she has been ill. *Id.* She provides that she and the applicant have no life in Mexico, and that she has been depressed since she became separated from him. *Id.* at 2.

The applicant's wife indicated that her parents have had illness, and that the applicant has helped her take care of her father. *Prior Statement from the Applicant's Wife*, undated. She stated that she and the applicant have a home in the United States which is almost paid off. *Id.* at 2.

The applicant's wife indicated that she has had other stresses in her life, including the fact that her son went to prison, and that the applicant's absence is creating emotional hardship for her. *Applicant's Wife's Statement with Form I-601*, undated.

The applicant submitted medical documentation for his wife that reflects that she has had leg and pelvic pain, and she has taken four medications.

Upon review, the applicant has not established that his wife will suffer extreme hardship if he is prohibited from entering the United States. The applicant's wife contends that she will experience hardship if the present waiver application is denied. Yet, the applicant did not assert or show that his wife would experience hardship should she relocate to Mexico to maintain family unity. The record contains references to economic hardships the applicant's wife is facing, yet the applicant has not shown that he and his wife are unable to work in Mexico to meet their needs. The applicant's wife stated that she and the applicant own a home in the United States, yet the applicant has not submitted any documentation to support this assertion, such to show that they would lose their home should the applicant's wife relocate to Mexico. The applicant's wife indicated that she assists her parents in the United States, yet the applicant has not provided medical documentation to support that his mother-and father-in-law are ill, or that they require assistance. It is noted that the applicant's wife explained that she lives alone, thus her parents do not reside with her for assistance. The applicant's wife expressed that she is experiencing emotional hardship due to separation from the applicant. Should she join him in Mexico, she would not bear the consequences of separation from him.

The applicant bears the burden of showing that denial of the present waiver application "would result in extreme hardship" to a qualifying relative. Section 212(a)(9)(B)(v) of the Act. In the absence of clear assertions by the applicant, the AAO may not make assumptions regarding hardship the applicant's family members may face should the waiver application be denied. As the applicant has not presented clear evidence or explanation regarding hardship his wife would face in Mexico, the applicant has not shown that she would experience extreme hardship should she relocate there. Section 212(a)(9)(B)(v) of the Act.

The applicant has not shown that his wife will experience extreme hardship should she remain in the United States. The applicant's wife contends that she is enduring economic hardship. Yet, the

applicant has not submitted any evidence of his wife's income, assets, or expenses. Nor has the applicant shown that he would be employed in the United States in order to assist his wife. Thus, the AAO lacks sufficient documentation to determine that the applicant's wife would experience economic hardship due to the applicant's absence should she remain.

The applicant's wife expressed that she is experiencing emotional hardship due to separation from the applicant. Yet, the applicant has not distinguished his wife's emotional hardship from that which is ordinarily experienced when spouses are separated due to inadmissibility. U.S. court decisions have held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

All elements of hardship to the applicant's wife have been considered in the aggregate. Based on the foregoing, the applicant has not shown by a preponderance of the evidence that denial of the present waiver application would result in extreme hardship to his wife. Section 212(a)(9)(B)(v) of the Act. 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(a)(9)(B) 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.