



U.S. Department of Justice

Immigration and Naturalization Service

2

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Comment

FILE: [Redacted] Office: Los Angeles

Date: APR 19 2000

IN RE: Applicant: [Redacted]

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

IN BEHALF OF APPLICANT:



preventing or
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was present in the United States in November 1990 without a lawful admission or parole. The applicant was found to be inadmissible to the United States under § 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 married a native of Mexico and naturalized United States citizen in April 1994 and is the beneficiary of an approved immediate relative visa petition. He seeks a waiver of this permanent bar to admission as provided under § 212(h) of the Act, 8 U.S.C. 1182(h), to remain with his spouse and children in the United States.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon his qualifying relatives and denied the application accordingly.

On appeal, counsel states that the applicant's wife and children will suffer extreme hardship if he is forced to return to Mexico because they will accompany him. Counsel provides medical statements which indicate that the applicant's wife suffers from bronchitis, his son [REDACTED] suffers from bronchitis and pulmonary problems and his son [REDACTED] suffers from eye problems. Counsel asserts that adequate medical treatment is not available in Mexico. The record reflects that the family is only able to afford medical treatment due to the applicant's medical insurance.

The record reflects the following:

(1) On October 1, 1993, the applicant was convicted of driving with suspended license.

(2) On May 17, 1993, the applicant was convicted of the offense of disorderly conduct-prostitution committed on May 14, 1993. Imposition of sentence was suspended, he was sentenced to 5 days in jail and he was placed on probation for 12 months with other restrictions. On October 7, 1993 he was convicted of violation of probation and sentenced to an additional 30 days in jail.

(3) On May 12, 1994, the applicant pleaded guilty to the offense of burglary (commercial) committed on April 20, 1994. Pronouncement of judgement was withheld, he was sentenced to serve 45 days in jail in 48 hour increments and he was placed on probation for 3 years.

(4) On November 22, 1995, the applicant pleaded guilty to the offense of disorderly conduct-prostitution committed on October 20, 1995. Imposition of sentence was suspended, he was sentenced to 1 day in jail and placed on probation for 2 years.

(5) On March 14, 1997, the applicant was convicted of driving with suspended license and of no proof of car insurance. He was sentenced to 30 days in jail to be served on consecutive weekends, was fined and was placed on summary probation for 3 years.

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(2) 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.

Section 212(h) WAIVER OF SUBSECTION (a)(2)(A)(i)(I), (II), (B), (D), AND (E).-The Attorney General may, in his discretion, waive application of subparagraph (A)(i)(I),...if-

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General 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

(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 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; and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or for adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

Here, fewer than 15 years have elapsed since the applicant committed his last violation. Therefore, he is ineligible for the waiver provided by § 212(h)(1)(A) of the Act.

Section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission resulting from inadmissibility under § 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The key term in the provision is "extreme." Therefore, only in cases of great actual or prospective injury to the qualifying relative(s) will the bar be removed. Common results of the bar, such as separation or financial difficulties, in themselves, are insufficient to warrant approval of an application unless combined with much more extreme impacts. Matter of Ngai, 19 I&N Dec. 245 (Comm. 1984). "Extreme hardship" to an alien himself cannot be considered in determining eligibility for a § 212(h) waiver of inadmissibility. Matter of Shaughnessy, 12 I&N Dec. 810 (BIA 1968).

On appeal, counsel discusses the hardship and deprivations that the applicant's family will face if they accompany him to Mexico and it is indicated that they have chosen to do that. The record indicates that the applicant's wife has resided in the United States since the age of 1 year and has no close relatives living in Mexico as her close relatives live in the United States. There is no law or regulation that requires the applicant's family to leave the United States.

Prior to the adverse decision, the applicant's spouse discusses the hardship of separation by remaining in the United States, the loss of the applicant's additional wages, the applicant's emotional support and the possibility of having to move to a smaller residence. Following the adverse decision other hardship related matters have been introduced. The record reflects that the applicant's spouse is employed by [REDACTED] whose address is identical to the address of the applicant and family and the applicant indicates on his Form G-325 that he has lived at [REDACTED] since October 1993. However other documentation in the record indicates that the applicant and his wife were residing at [REDACTED] when

she prepared the affidavit of support on November 12, 1997, at [REDACTED] in March 1997, at [REDACTED] when she renewed her driver's license when the Form I-485 application was prepared in June 1996. The record is devoid of any U.S. addresses of any of the alleged close relatives of either the applicant or his wife who could assist her if she remained in the United States. There is no evidence that the applicant's spouse has medical insurance or evidence that the applicant's wife does not have medical through her employment at Courtesy Employment Service.

A review of the documentation in the record, when considered in its totality, fails to establish the existence of hardship over and above the normal economic and social disruptions involved in the deportation of a family member that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to remain in the United States. It is concluded that the applicant has not established the qualifying degree of hardship in this matter.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Attorney General and pursuant to such terms, conditions, and procedures as she may by regulations prescribe. Since the applicant has failed to establish the existence of extreme hardship, no purpose would be served in discussing a favorable exercise of discretion at this time.

In proceedings for application for waiver of grounds of inadmissibility under § 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. Matter of Ngai, supra. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.