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U.S. Department of Justice

Immigration and Naturalization Service

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

[Redacted]

File: [Redacted]

Office: LOS ANGELES, CA

Date:

JUN 13 2001

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)

IN BEHALF OF APPLICANT:

[Redacted]

Public Copy

identification data deleted to
prevent clearly unwanted
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

Robert P. Wiemann, Acting 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 found to be inadmissible 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 citizen of the United States in 1996 and is the beneficiary of an approved petition for alien relative. She seeks a waiver of this permanent bar to admission as provided under § 212(h) of the Act, 8 U.S.C. 1182(h), to reside in the United States with her spouse and children.

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

On appeal, counsel states that the applicant did not realize the seriousness of the situation or understand how to properly compile evidence to support her case when she initially submitted her application for a waiver and that she only retained counsel after receipt of the denial of her request. Counsel asserts that the applicant is rehabilitated and that if she were removed from the United States, her spouse and children would suffer extreme hardship.

The record contains numerous documents regarding the applicant's criminal history. The record reflects that the applicant was arrested on several occasions between 1990 and 1997 on a variety of charges including, but not limited to the following: alien smuggling, false claim to United States citizenship, theft, theft of personal property, petty theft with a prior conviction, giving false information to a police officer, inflicting injury on a spouse, willful cruelty to a child, driving without a license, violation of probation, and contempt of court. Many of the charges against the applicant were either dismissed or declined prosecution. The record indicates that the applicant was convicted of the following: on or about May 3, 1990, of giving false information and driving with a suspended and/or revoked license; on or about June 7, 1991, of theft of personal property; on or about February 5, 1993, of petty theft with a prior conviction/jail term; and on or about January 27, 1998, of inflicting corporal injury on a spouse.

Section 212(a) of the Act states:

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), an alien convicted of, or who admits having committed, or who admits committing such 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) of the Act states:

The Attorney General may, in his discretion, waive application of subparagraphs (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 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 her last violation. Therefore, she 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 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.

19 I&N Dec. 245 (Comm. 1984). 927 F.2d 465 (9th Cir. 1991). "Extreme hardship" to an alien herself cannot be considered in determining eligibility for a § 212(h) waiver of inadmissibility. 12 I&N Dec. 810 (BIA 1968).

On appeal, counsel submits statements from the applicant, her spouse, and children in support of the applicant's waiver request. The information supplied indicates that the applicant's children speak very little Spanish and are unable to read or write in that language. It would be difficult for them to relocate to Mexico to be with their mother. In addition, the applicant's spouse states that to be a single parent and provide for his children without his wife's presence would be stressful and economically difficult for him as his wife's income is very important to the family's welfare.

There are no laws that require the applicant's spouse and children to leave the United States and live abroad. 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.

[REDACTED] 39 F.3d 1049 (9th Cir. 1994). In [REDACTED] 437 F.2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States."

In addition, the assertion of financial hardship to the applicant's spouse advanced in the record is contradicted by the fact that, pursuant to § 213A of the Act, 8 U.S.C. 1183a, and the regulations at 8 C.F.R. 213a, the person who files an application for an immigrant visa or for adjustment of status on or after December 19, 1997 must execute a Form I-864 (Affidavit of Support) which is legally enforceable in behalf of a beneficiary (the applicant) who is an immediate relative or a family-sponsored immigrant when an applicant applies for an immigrant visa. The statute and the regulations do not provide for an alien beneficiary to execute an affidavit of support in behalf of a U.S. citizen or resident alien petitioner. Therefore, a claim that an alien beneficiary is needed for the purpose of supporting a citizen or resident alien petitioner can only be considered as a hardship in rare instances.

A review of the documentation in the record, when considered in its totality, fails to establish the existence of hardship over and above normal social and economic disruptions of separation that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to reside 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 he 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. [REDACTED] Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.