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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

File [redacted] Office: JACKSONVILLE, FLORIDA Date: AUG 14 2003

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:

This is the decision 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 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Jacksonville, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 24-year old native and citizen of Mexico. The applicant is a beneficiary of a petition for alien relative filed by her naturalized U.S. citizen husband. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h), in order to reside in the United States with her husband and two children.

The district director concluded that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), and that she failed to establish extreme hardship to her United States citizen spouse and children. The application was denied accordingly.

On appeal, the applicant stated that she needed ninety days to submit a brief and or additional evidence. More than ninety days have lapsed since she filed the appeal and nothing more has been submitted into the record.

The district director's decision found the applicant to be inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act based on the fact that the applicant was convicted twice of petty larceny, a crime involving moral turpitude.

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.

According to the evidence on the record, the applicant was adjudicated guilty of one count of petty larceny and plead guilty to a second county of petty larceny on January 27, 1998.

The applicant in the present case was over 18 years of age when she committed the crimes. She thus does not meet the requirements for an exception as set forth in section 212(a)(2)(A)(ii) of the Act.

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

> The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the 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 [Secretary] that-

(i) [T]he 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, or

(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 [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 . . . . and

(2) the Attorney General [Secretary], 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.

In a letter accompanying the application for waiver of ground of inadmissibility, the applicant indicated that she has been married for more than four years and that they have two young children. She further indicates that she has never been apart from her family and that it would be unfair to take her away from her husband and children. She stated that she has no family residing in Mexico so she would have no family support to help her with the separation if her admission to the United States should be denied. While the applicant asserted that she would also suffer hardship if a waiver of inadmissibility was not granted, section 212(h) of the Act clearly provides that extreme hardship relates only to the applicant's U.S. citizen or legal permanent resident spouse, son, daughter, or parent. In the present case, the record indicates that the applicant's qualifying relatives include her United States citizen spouse, and two United States citizen children (ages two and four). Hardship to the applicant herself will thus not be taken into account.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provided a list of factors the Board of Immigration Appeals (BIA) deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors

included 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.

Matter of Pilch, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family ties is a common result of deportation and does not constitute extreme hardship. *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), additionally 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. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that her qualifying relatives would suffer extreme hardship if she were excluded from the United States.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.