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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]

JUL 02 2003

FILE: [redacted] Office: Los Angeles Date:

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

ON BEHALF OF APPLICANT:

[redacted]

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

JUL0203_06H2212

DISCUSSION: The waiver application was denied by the Acting District Director, Los Angeles, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who was present in the United States without a lawful admission or parole in June 1980. He 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 married a native of Mexico and naturalized U.S. citizen in December 1993, and he is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of this permanent bar to admission as provided under section 212(h) of the Act, 8 U.S.C. § 1182(h).

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon his United States citizen wife and denied the application accordingly.

On appeal, counsel states that the waiver should be granted based on extreme emotional hardship to the applicant's U.S. citizen mother. Counsel states that the emotional bond between the applicant and his mother is unique and shows the essence of human struggle, interfamily chaos, and family unity. Counsel submits a statement from the applicant's mother that tells of her departure from El Salvador to escape spousal abuse and other problems, and of eventually being able to bring her children to the United States in 1980. It also relates how the applicant, as a young boy, helped her through difficult times. The record fails to contain a statement from the applicant's United States citizen wife.

The record reflects the following:

1. On October 28, 1987, the applicant was arrested and charged with the offense of Grand Theft Property, Grand Theft Auto according to one FBI report, and Receiving Stolen Property. The charge of Grand Theft Property was dismissed, and he was convicted of the offense of Receiving Stolen Property. The applicant was sentenced to 120 days incarceration and was placed on 3 years probation.

2. On August 4, 1988, the applicant was arrested and charged with the offense of Grand Theft Vehicle. At the time, he was on probation from the previous conviction. There is no further disposition of this matter in the record.

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

> (A)(i) 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) of the Act provides, in part, that:-The Attorney General [now Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I),...or subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana 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 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 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.

Here, fewer than 15 years have elapsed since the applicant committed the last violation. Therefore, the applicant is

ineligible for the waiver provided by section 212(h)(1)(A) of the Act.

Nothing could be clearer than Congress' desire in recent years to limit, rather than extend, the relief available to aliens who have committed crimes involving moral turpitude. In addition to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub L. 104-208, 110 Stat. 3009, this intent was seen in the provisions of the Antiterrorism and Effective Death Penalty Act of 1996, Pub.L. No. 104-132, 110 Stat. 1214, which relates to criminal aliens. Congress has almost unfettered power to decide which aliens may come to and remain in this country. This power has been recognized repeatedly by the Supreme Court. *See Fiallo v. Bell*, 430 U.S. 787 (1977); *Reno v. Flores*, 507 U.S. 292 (1993); *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). *See also Matter of Yeung*, 21 I&N Dec. 610, 612 (BIA 1997).

Section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission resulting from inadmissibility under section 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 section 212(h) waiver of inadmissibility. *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968).

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.

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 section 212(h) of the Act, the burden of establishing that the application merits approval 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.