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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 17 2003

FILE: [redacted] Office: DENVER, CO Date:

IN RE: [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:

[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

JUL17 03_03H2212

DISCUSSION: The waiver application was denied by the District Director, Denver, Colorado, and 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)(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 is married to a United States (U.S.) citizen and he is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside with his wife in the United States.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon his U.S. citizen wife. The application was denied accordingly.

On appeal, counsel asserts that the Immigration and Naturalization Service ("INS", now known as the Bureau of Citizenship and Immigration Services, "Bureau") abused its discretion in assessing hardship to the applicant's wife (Mrs. [redacted]. Counsel asserts that the district director erroneously combined "exercise of discretion" and "extreme hardship" tests in its denial of the applicant's claim, and that the outcome was thus erroneous. Counsel asserts further that the applicant has established that his wife would suffer extreme financial and emotional hardship if he were removed from the United States.[1]

The record reflects that the applicant was convicted of the offense of Larceny/Theft on November 10, 1997, on August 28, 1998 (two cases) and on August 21, 2000.

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

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[1] It is noted that counsel directed the present appeal to the Board of Immigration Appeals (BIA), and that he requested a three-member BIA review of the case pursuant to 8 C.F.R. § 3.1. The BIA does not have jurisdiction over the present case. Pursuant to 8 C.F.R. § 103.1(3)(iii)(F), the Associate Commissioner for Examinations (through the AAO) exercises appellate jurisdiction over decisions on applications of inadmissibility relating to immigrant visa and adjustment of status applications.

> (A)(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(h) of the Act provides, in pertinent part, that:

> (h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -
>
> . . . .
>
> > (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, Homeland Security]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 . . . .

Section 212(h) of the Act thus provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

Counsel asserts that the district director combined factors relating to the determination of extreme hardship and relating to the exercise of discretion in his analysis, and that the denial of the applicant's case was therefore inadequate and erroneous. Counsel asserts further that the district director's decision was cursory and contained no analysis of Mrs. [redacted] hardship.

The district director's decision states, in pertinent part, that:

> [I]n support of your application . . . you have provided a letter of support from your wife . . . .

> The letter states that you have recognized your past behavior. Your wife states that it would be an extreme hardship if you had to leave because she would lose her home. She would not be able to afford the payments without your support.
>
> . . . .
>
> Through your application and the letter from your wife, [redacted] you claim there will be extreme hardship to your United States citizen wife. In assessing whether an applicant has met his burden of establishing that a grant of waiver of inadmissibility is warranted in the exercise of discretion, there is a balancing of the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane consideration presented on his behalf to determine whether the grant of waiver appears to be in the best interest of the United States. *Matter of Mendez-Morales*, Int. Dec. 3272 (BIA 1996).
>
> You have failed to establish that the denial of this application will create extreme hardship, hardship beyond the attendant hardship encountered in any deportation, for you or your family. "When the potential hardships the alien may encounter are the same faced by any alien to be deported, the "extreme hardship" standard has not been met . . . .

See District Director Decision, dated September 27, 2002 (citations omitted).

Based on the above language, this office does not find that the district director combined "extreme hardship" and "exercise of discretion" analyses in making its decision. Although the district director's decision discusses briefly the general test used for analyzing whether discretion should be exercised, the decision clearly states that the basis of denial in this case is the fact that the evidence in the file failed to establish the applicant's wife would suffer hardship beyond that normally suffered by aliens who are removed from the United States.

Because the applicant was found statutorily ineligible for section 212(h) relief, the district director was not required to balance the adverse and positive factors of the applicant's case, and the decision made no determination regarding whether discretion should be exercised.

Counsel's assertion that the district director's treatment of Mrs. [redacted] hardship was cursory and an abuse of discretion is also unpersuasive. In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien had established extreme hardship pursuant to section 212(i) of the Act. The 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.

The record contains a letter written by Mrs. [redacted] stating that she and her husband are happily married, that they are buying a home together and that she would be alone and unable to pay house payments and expenses without the applicant's help. *See Letter from* [redacted] dated June 28, 2002. Mrs. [redacted] asserted no other hardship and counsel submitted no new evidence on appeal to indicate that Mrs. [redacted] would suffer additional hardship if the applicant were removed from the United States.

The district director's decision mentions the above hardship factors and concludes that they are not enough to establish extreme hardship. The fact that the decision does not address any other hardship factors is thus not due to an abuse of discretion by the district director, but rather it is due to the fact that, based on the evidence in the record, no other hardship factors were asserted.

U.S. court decisions have repeatedly 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, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. 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. As discussed above, the evidence in the present case does not support 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 his U.S. citizen wife will suffer extreme hardship if his waiver of inadmissibility application is denied. Having found the applicant ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(2)(A) 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.