



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **MAR 25 2013** Office: SAN FRANCISCO, CA

FILE: [Redacted]

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:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for waiver of inadmissibility was denied by the Field Office Director, San Francisco, California. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be dismissed.

The applicant is a native and citizen of Micronesia 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 crimes involving moral turpitude. The applicant does not contest the finding of inadmissibility. The applicant's spouse and three children are U.S. citizens. He seeks a waiver of inadmissibility in order to reside in the United States.

The field office director found that the applicant had failed to show extreme hardship to a qualifying relative and he denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Field Office Director's Decision*, dated May 11, 2010. The AAO found that the applicant committed violent or dangerous crimes and he failed to establish exceptional and extremely unusual hardship; and the appeal was dismissed accordingly. *AAO Decision*, dated September 21, 2012.

The applicant has filed a motion to reconsider. On motion, counsel asserts that the applicant did not commit a violent or dangerous crime and is not subject to the exceptional and extremely unusual hardship standard, and even if he was subject to this standard, the AAO erred in finding that he failed to meet this standard. *Form I-290B*, received October 17, 2012.

A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

On motion, the applicant has submitted a brief.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

- (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.

As mentioned on the initial AAO decision, the applicant was convicted of assault with a deadly weapon or force likely to produce great bodily injury in violation of California Penal Code § 245(a) on April 19, 1999, and willful infliction of corporal injury in violation of California Penal Code § 273.5(a) on September 18, 2007. The AAO found that the applicant committed two crimes involving moral turpitude and that he is inadmissible to the United States under section

212(a)(2)(A)(i)(I) of the Act. As the AAO found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act, it did not address whether his conviction for abuse of a family member/household member in violation of Hawaii Revised Statutes § 709-906(1) on December 5, 1996 involves moral turpitude.

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if –

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

The regulation at 8 C.F.R. § 212.7(d) provides:

The Attorney General [Secretary, Department of Homeland Security], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

As mentioned on the initial AAO decision, the AAO found the applicant's convictions for assault with a deadly weapon or force likely to produce great bodily injury and willful infliction of corporal injury to be violent or dangerous crimes pursuant to 8 C.F.R. § 212.7(d). As such, the AAO assessed whether he is entitled to a favorable exercise of discretion under section 212(h)(2) of the Act.

On motion, counsel asserts that the applicant's convictions were misdemeanors and the 30 day and 1 day sentences he received for the aforementioned crimes are not consistent with a finding that the crimes were violent or dangerous pursuant to 8 C.F.R. § 212.7(d). Counsel has not provided a legal basis for this assertion. There is no language in 8 C.F.R. § 212.7(d), or any other precedent of which we are aware, supporting the argument that length of a sentence is relevant in determining whether a crime is violent or dangerous under that regulation.

The AAO finds no basis to reconsider that the applicant committed violent or dangerous crimes pursuant to 8 C.F.R. § 212.7(d). To establish eligibility for a waiver of inadmissibility in the present case, the applicant must show that "extraordinary circumstances" warrant its approval. Extraordinary circumstances may exist in cases involving national security or foreign policy considerations; or if the denial of the applicant's admission would result in exceptional and extremely unusual hardship. Finding no evidence of foreign policy, national security, or other extraordinary equities, the AAO will consider whether the applicant has "clearly demonstrate[d] that the denial of . . . admission as an immigrant would result in exceptional and extremely unusual hardship". We note that the regulatory standard of exceptional and extremely unusual hardship found in 8 C.F.R. § 212.7(d) is more restrictive than the extreme hardship standard set forth in section 212(h) of the Act. *Cortes-Castillo v. INS*, 997 F.2d 1199, 1204 (7th Cir. 1993).

Counsel asserts that the AAO erred in finding that the applicant failed to meet the exceptional and extremely unusual hardship standard. Counsel cites case law in asserting that separation of family members is the most important single hardship factor and in detailing other relevant hardship factors, such as country conditions, family ties inside and outside of the United States, financial impacts, period of residence in the United States and other means of being able to enter the United States. He refers to case law in asserting that the higher standard is not so restrictive that only a handful of applicants will qualify for relief. The AAO listed relevant exceptional and extremely unusual hardship case law in its initial decision.

Counsel makes claims similar to those made on appeal, including that the applicant and his spouse have businesses in the United States; their children are good students and the applicant takes an active role with them; the children would suffer emotional and psychological harm due to separation from the applicant; his spouse and children have no ties to Micronesia and do not speak the language; the children would lose educational opportunities in Micronesia; the family depends on the applicant financially; Micronesia is a poor country and the applicant's family would face extreme poverty conditions; Micronesia is far away and expensive to travel to; the applicant's spouse would be unable to work in Micronesia; and the applicant's family is not familiar with the culture and customs in Micronesia.

On motion, counsel has not submitted any additional supporting documentation to support the

applicant's case. The AAO has considered the contentions made by counsel in light of the case law he has mentioned, and the case law cited by the AAO in its initial decision. However, counsel has not demonstrated that the AAO's decision was based on an incorrect application of law or USCIS policy. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that denial of the waiver application would result in exceptional and extremely unusual hardship should the applicant's family members relocate to Micronesia or remain in 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. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the waiver application will remain denied.

ORDER: The motion is dismissed.