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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

H2

[REDACTED]

FILE:

[REDACTED]

Office: SANTA ANA, CA

Date: SEP 23 2005

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 of the Administrative Appeals Office 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

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

The applicant is a native and citizen of Guatemala who 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 is the spouse of a United States citizen and the father of a United States citizen seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his spouse and child.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated May 5, 2004.

On appeal, counsel states that the applicant properly demonstrated that his spouse would suffer extreme hardship if the waiver were not approved. Counsel contends that the applicant's home country still suffers the consequences of a civil war waged over a decade ago and that jobs are scarce. Counsel states that the applicant's child suffers from clubfoot and needs to remain in the United States to obtain sufficient care. *Form I-290B*, dated May 20, 2004.

The record reflects that on December 3, 1996, the applicant was convicted of inflicting corporal injury on spouse/cohabitant in the Supreme Court of California. On April 24, 1997, the applicant was convicted of burglary in the Superior Court of California.

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

(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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

(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)(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 . . .

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings

under section 212(h) of the Act. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include 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.

Counsel asserts that the applicant's spouse and child will suffer hardship as a result of relocation to Guatemala in order to remain with the applicant. Counsel states that the applicant's spouse has resided in the United States her entire life. *Form I-290B*. He submits a declaration of the applicant's spouse stating that Guatemala is a place where her husband suffered from poverty and where she would be forced to face violence. *Declaration of [REDACTED]*, dated February 20, 2004. Counsel further indicates that the applicant's child suffers from clubfoot and although he may be able to receive treatment in Guatemala, care is more readily available to him in the United States. See *Form I-290B*. See also *Declaration of [REDACTED]*.

The record fails to establish that the applicant's spouse and child will suffer extreme hardship if they remain in the United States in order to maintain proximity to adequate health care and avoid the poverty and violence that characterizes Guatemala. Counsel contends that the applicant's spouse would suffer hardship as a result of separation from the applicant. The applicant's spouse states that she has headaches and cannot sleep or eat as a result of the applicant's inadmissibility. *Declaration of [REDACTED]*. While the situation confronting the applicant's spouse is regrettable, the AAO notes that the record does not provide substantiating documentation of the emotional hardship suffered by the applicant's spouse; the record fails to establish that the applicant's spouse has sought consultation with a medical professional in relation to her symptoms. The applicant's spouse asserts that the income earned by the applicant is necessary to support their household. *Id.* She indicates that she will be unable to pay for their house in his absence. *Id.* The record demonstrates that the applicant's spouse works as an assistant nurse. While she may need to adjust her current living arrangements, the record fails to establish that she is dependent on the income earned by the applicant to subsist.

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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), 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. *Hassan v. INS, supra*, held further that 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. The AAO recognizes that the applicant's spouse and child will likely endure hardship as a result of separation from the applicant. However, their situation, if they remain in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and/or child caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

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 appeal will be dismissed.

ORDER: The appeal is dismissed.