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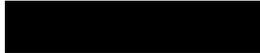


U.S. Citizenship
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FILE:



Office: LOS ANGELES, CA Date: APR 13 2006

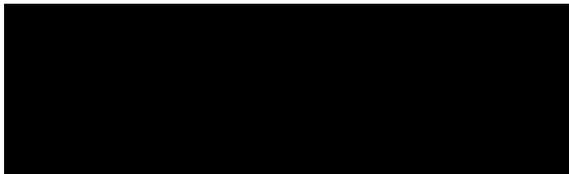
IN RE:



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:



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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of El Salvador 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 (grand theft). The record indicates that the applicant has a U.S. citizen spouse and child. The applicant seeks a waiver of inadmissibility in order to reside with his family in the United States.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on his spouse and denied the Application for Waiver of Grounds of Excludability. *Decision of the District Director*, dated September 14, 2004.

On appeal, counsel asserts that the assessment of the extreme hardship to the applicant's spouse and child was inaccurate and the district director erred in denying the waiver request. *Form I-290B*, dated October 15, 2004.

The record includes, but is not limited to, counsel's brief, photographs of the applicant's family, medical records for the applicant's daughter and information on El Salvador. The entire record was reviewed and considered in arriving at a decision on the appeal.

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.

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

(h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] 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 [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 AAO notes that section 212(h) of the Act 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. The district director correctly cited section 212(h) of the Act, but erred in stating that only the effects on the U.S. citizen spouse could be considered. Hardship to the applicant's U.S. citizen child must also be considered. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) the Board of Immigration Appeals (BIA) provided a list of factors it deems relevant in determining whether an alien has established extreme hardship. These factors included, but are not limited to, the presence of lawful permanent resident or United States citizen family ties to 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to one of the qualifying relatives must be established in the event that they relocate to El Salvador or in the event that they remain in the United States, as they are not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of relocation to El Salvador. The record includes articles on the country conditions in El Salvador which details high crime rates and limited medical care. In addition, El Salvador is currently designated under the Temporary Protected Status (TPS) program due to a series of severe earthquakes that left over a quarter of the country's population without housing and significantly damaged the infrastructure of the country. *Federal Register*, Vol. 67, No. 133, pp. 46000, Thursday, July 11, 2002, Notices. Under the TPS program, citizens of El Salvador are allowed to remain in the United States temporarily due to the inability of El Salvador to handle the return of its nationals due to the disruption of living conditions. As such, requiring the applicant's U.S. citizen family members to relocate to El Salvador in its current state would constitute extreme hardship.

The second part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event that they remain in the United States. The record reflects that the applicant's daughter had surgery to correct a congenital hip dislocation. The applicant's daughter had this surgery on November 30, 1999 and the record includes physical therapy records from 2000. The AAO notes that there is no evidence of her current condition.

Counsel states that the applicant's daughter must be checked regularly by doctors until she reaches the age of eighteen. *Brief in Support of Appeal*, at 5, dated November 12, 2004. Counsel asserts that the applicant's daughter is extremely attached to both parents and she gets anxious if she is apart from either of them for too long. *Id.* Counsel states that both the parents need to work in order to support the family and provide medical help. *Id.* Counsel states that the applicant's spouse would not be able to work and raise their daughter without the applicant's financial and physical help and she could not afford to make their home payments. *Id.* The AAO notes that without documentary evidence to support these claims, the assertions of counsel will not

satisfy the applicant's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Therefore, the record does not demonstrate extreme hardship to the applicant's spouse or child should they remain in the United States without the applicant.

U.S. court decisions have 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.

Moreover, the U.S. Supreme Court additionally 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.

The AAO notes that a review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative in the event that they remain in the United States without the applicant. 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. 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.