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U.S. Citizenship  
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[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES, CA

Date: AUG 04 2006

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, Chief  
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 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 crimes involving moral turpitude. The applicant is the child of a naturalized citizen of the United States, the fiancé of a citizen of the United States and the parent of United States citizens. He is the beneficiary of an approved Petition for Alien Relative (Form I-130) and 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 mother, fiancée, children and siblings.

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 February 4, 2004.

On appeal, counsel contends that the applicant is genuinely rehabilitated from criminal behavior, that the applicant's family will experience extreme hardship if he is removed from the United States, that the applicant has a history of employment and that he is a person of good moral character. *Brief in Support of Applicant's Request for 601 Waiver*, dated April 1, 2004. In support of these assertions, counsel submits a brief; birth certificates and other forms of identification for the applicant's qualifying relatives and extended family members; court records relating to the applicant's criminal history and rehabilitation; verification of the applicant's employment; letters of support; a letter from a therapist; an affidavit of the applicant's mother; medical records relating to the health of the applicant's mother; a letter from one of the applicant's children; documents evidencing scholastic achievement by one of the applicant's children; an affidavit from the mother of one of the applicant's children; affidavit of the applicant's fiancée and copies of receipts of child support payments made by the applicant to the mother of one of the applicant's children. The entire record was reviewed and considered in rendering a decision on the applicant's appeal.

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 . . .

The record reflects that, on November 7, 1995, the applicant was convicted of Inflict Corporal Injury on Spouse in the Municipal Court of Los Angeles. He was placed on probation for three years, ordered to perform community service and ordered to pay restitution. The record further reflects that, on February 8, 1994, the applicant was convicted of Attempted Murder and sentenced to 180 days in county jail. The record reflects that, on April 2, 1992, the applicant was convicted of Disturbing the Peace and sentenced to 5 days in county jail.

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. Hardship the alien himself experiences upon deportation is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's parents. 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 (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.

On appeal, counsel contends that the applicant's mother, fiancée and children would suffer extreme hardship as a result of remaining in the United States in the absence of the applicant. Counsel indicates that separation from the applicant would impose psychological hardship on the applicant's mother, fiancée and children and submits a psychological assessment for the applicant in support of these assertions. *Brief in Support of Applicant's Request for 601 Waiver*, dated April 1, 2004. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on individual psychotherapy undertaken by the applicant himself and does not reflect an ongoing relationship between a mental health professional and a qualifying relative. *Letter from [REDACTED] LMFT, CIRT*, dated April 1, 2004. "[REDACTED] came to see me because of his anxiety about his possible deportation." Moreover, although the submitted letter discusses the applicant's qualifying relatives, its insights in regard to them appear to be based solely on information provided by the applicant to the writing licensed psychotherapist rather than on individual meetings between the qualifying relatives and the psychotherapist. Therefore, the therapist's statements in regard to the applicant's qualifying relatives do not reflect the elaboration commensurate with an established relationship between an individual and a therapist rendering the findings speculative and diminishing the evaluation's value to a determination of extreme hardship. The AAO notes that the submitted letter reads like a summary of the applicant's situation and relationships and does not possess the tenor of a psychological evaluation. *Id.* ("[The applicant's] fiancé [sic] is now pregnant with their second child....[The applicant] is also a devoted son to his mother..."). The submitted letter, standing alone,

does not establish that the applicant's mother, fiancée and children possess a history of mental health issues or that they will experience psychological difficulty above or beyond the usual difficulties associated with separation from a loved one as a result of the applicant's inadmissibility.

Counsel contends that the applicant's presence is required to provide care to his ailing mother. *Brief in Support of Applicant's Request for 601 Waiver*. Counsel submits an affidavit of the applicant's mother stating that the applicant's mother has been diagnosed with diabetes, acute and recurring bronchitis, hypertension, hiatal hernia, osteoarthritis, hypercholesterolemia, rheumatoid arthritis, and atypical chest pain. *Affidavit of [REDACTED]*, dated March 21, 2004. The applicant's mother indicates that the applicant takes her to medical appointments and assists her with household chores. *Id.* While the AAO sympathizes with the plight of the applicant's mother, the record fails to establish that the applicant is the only person able to provide care to his mother. On the contrary, the record reflects that the applicant has three siblings in the United States and that the family shares a close relationship. *Letter from [REDACTED] LMFT, CIRT* ("[The applicant] has a close relationship with his three siblings ... with whom he is very much involved ..."). Moreover, the submitted documentation fails to indicate the extent and nature of the care required by the applicant's mother on a daily basis as a result of the conditions from which she suffers. In the absence of documentation establishing that the applicant's mother is unable to care for herself, the AAO is unable to render a finding of extreme medical or physical hardship imposed on the applicant's mother as a result of the applicant's inadmissibility.

The mother of one of the applicant's children and the applicant's fiancée contend that the applicant's children will face financial hardship in the absence of the applicant's earnings. *See Letter from [REDACTED] undated; see also Letter from [REDACTED] dated September 23, 2003*. The mother of one of the applicant's children states that she and the applicant's child would not be able to survive without the \$200 per month that the applicant provides. *Letter from [REDACTED]* In support of this assertion, the record contains copies of receipts for payments of child support made by the applicant to the mother of his child. The AAO acknowledges the assertions made by the mother of the applicant's child and the assertions made by the applicant's fiancée, however the record fails to demonstrate that these women and their children would face financial hardship in the absence of the applicant because the record fails to establish the incomes earned by the writing women and whether there are or are not other sources of financial support for the applicant's children. Further, the record fails to establish that the applicant will be unable to financially contribute to his children's maintenance from a location outside of the United States. 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.

In addition, the record makes no assertions regarding the factors identified in *Matter of Cervantes-Gonzalez* and therefore, fails to address the qualifying relatives' family ties outside the United States; the conditions in the country or countries to which the qualifying relatives would relocate and the extent of the qualifying relatives' 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 relatives would relocate. In the absence of documentation addressing these subjects, the AAO is unable to determine whether or not extreme hardship would be imposed on the applicant's fiancée and children as a result of relocating to Guatemala in order to remain with the applicant. The AAO notes that the applicant's mother states that she is unable to relocate to Guatemala to remain with the applicant owing to the

lack of medical care available there. *Affidavit of* [REDACTED] The record fails to offer documentation substantiating the contentions of the applicant's mother with regard to health care in Guatemala. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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 mother, fiancée and children would endure hardship as a result of separation from the applicant or as a result of relocating to Guatemala in order to remain with the applicant. However, their situation, based on the record, 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 mother, fiancée and children 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.