



U.S. Citizenship
and Immigration
Services

H/2

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



FILE:

Office: LOS ANGELES, CA

Date: JUN 05 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.

Robert P. Wiemann, Chief
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 El Salvador 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 naturalized citizen of the United States and the parent of three citizens of the United States. 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 spouse and children.

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 District Director*, dated September 30, 2004.

On appeal, counsel states that the applicant's spouse will indeed suffer extreme hardship if the applicant's waiver request is denied. *Form I-290B*, dated October 29, 2004. In support of this assertion, counsel submits a brief. The entire record was reviewed and considered in rendering a decision on the applicant's appeal.

The record reflects that, on May 20, 2002, the applicant was convicted of Battery in the Municipal Court of Glendale, California. The applicant was placed on probation for a period of three years and fined. The record further reflects that, on July 16, 1996, the applicant was convicted of Using Firearm or Deadly Weapon in the Municipal Court of Glendale, California. The applicant was sentenced to 60 days in jail and placed on probation for a period of three years. The record further reflects that, in 1993, the applicant was convicted of Perjury in the Municipal Court of Glendale, California. The applicant was sentenced to 17 days in jail and placed on probation for a period of three years. The record further reflects that, in 1990, the applicant was convicted of Receive Known Stolen Property in the Superior Court of Los Angeles, California. The applicant was sentenced to 120 days in jail and placed on probation for a period of three years.

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.

The AAO notes that the record establishes that the parents of the applicant reside in the United States. *See G-325A of [REDACTED]*, dated May 3, 1993. However, the record fails to establish whether the parents of the applicant are lawful permanent residents or naturalized citizens of the United States. Therefore, only hardship imposed on the applicant's spouse and children is considered by the AAO. The AAO notes that counsel errs in stating that hardship imposed on the applicant's United States citizen children as a result of the applicant's inadmissibility is "not considered in the I-601 inquiry." *Brief in Support of AAO Appeal of Denial of I-601 Waiver for [REDACTED]* dated November 11, 2004. Section 212(h) of the Act provides for consideration of "extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien..."

On appeal, the record contains general statements from counsel indicating that the applicant's spouse will suffer if she remains in the United States in the absence of the applicant as a result of financial problems, loss of employment, and physical separation as well as owing to the loss of the applicant's emotional support in addressing every day matters. *Id.* Counsel contends that the applicant's spouse would suffer hardship as a result of uprooting her children from the United States in order to relocate to Mexico because they speak little Spanish and would forfeit the educational opportunities available in this country. *Id.* The assertions of counsel are unsubstantiated by the record and therefore fail to be persuasive. Although counsel articulates hardship that would be imposed on the applicant's spouse, the record lacks a statement from the applicant's spouse herself and fails to measurably demonstrate the financial and/or emotional hardship that would be imposed on the applicant's spouse and children as a result of separation from the applicant. While the AAO acknowledges the letters of support from family members contained in the record, their assertions of hardship are also generalized and do not indicate the specific hardships that would be confronted by the applicant's family as a result of relocation or in the absence of the applicant. The AAO is unable to render a favorable finding in the absence of a coherent, particularized argument of extreme hardship evidenced by the record.

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/or children would likely endure hardship as a result of separation from 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 spouse and/or 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.