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FILE:

Office: LOS ANGELES, CA

Date: JUN 19 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. Wiemahn, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Interim 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 Guatemala 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 (lewd acts with a child under 14). The record indicates that the applicant's spouse and two children are U.S. citizens. The applicant seeks a waiver of inadmissibility in order to reside with his family in the United States.

The interim district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Interim District Director's Decision*, dated September 17, 2003.

On appeal, counsel asserts that the decision failed to use the appropriate standard for extreme hardship and the decision is incorrect as a matter of law. *Form I-290B*, dated October 17, 2003.

The record includes, but is not limited to, counsel's brief, statements from the applicant and the applicant's criminal record. 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. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Counsel cites *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), a case used by the AAO in adjudicating

extreme hardship waivers which lists relevant factors for extreme hardship analysis. These factors included 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 Guatemala 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 Guatemala. The record reflects that the qualifying relatives' family ties to the United States are each other. Counsel asserts that they will face financial hardship if they relocate as the applicant will most likely obtain work with a low salary. *Brief in Support of Appeal*, at 6, undated. Counsel cites *Tukhowinich v. INS*, 64 F.3d 460 (9<sup>th</sup> Cir. 1995) as precedent in establishing that the applicant's spouse will suffer extreme hardship due to the applicant's inability to support his family from a lack of financially comparable employment in Guatemala. *Id.* The AAO notes that *Tukhowinich v. INS* is a suspension of deportation case which dealt with extreme hardship suffered by the alien herself and the alien in that case was supporting eight family members along with having psychological issues. *See id.* at 464. Therefore, it is not an analogous situation to the applicant's case. The record is devoid of information on the country conditions in Guatemala and specifically to the area that the qualifying relatives would relocate to. Based on the entire record, the applicant has not demonstrated that his spouse or children would face extreme hardship if they relocated to Guatemala.

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. Counsel states that the applicant's spouse will have to work full-time and provide for the children even though she has only worked sporadically and in low-paying positions while married. *Brief in Support of Appeal*, at 5. The applicant's spouse states that the family would miss the applicant, his company and would suffer irreparable harm. *Applicant's Spouse's Statement*, at 1, dated September 1, 1996. The applicant's spouse details the strong emotional relationship she and the children have with the applicant. *Applicant's Spouse's Updated Statement*, at 2, dated July 29, 2003. The AAO notes that single parent households are not uncommon in the United States and that separation entails inherent emotional stress and financial problems which are common to those involved in the situation. Therefore, the record does not demonstrate extreme hardship to the applicant's spouse or children should they remain in the United States without the applicant.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse or children would suffer hardship that is unusual or beyond that which would normally be expected upon removal. Having found the applicant statutorily ineligible for relief, no purpose would be served in an additional discussion of whether the applicant 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.