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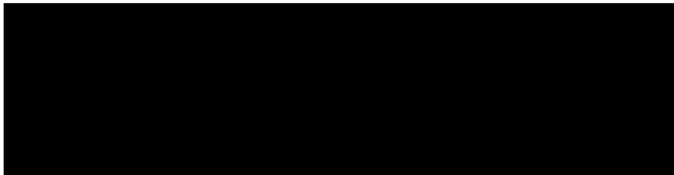
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: LOS ANGELES, CA

Date:

FEB 20 2008

IN RE: Applicant:



APPLICATION:

Application for Waiver of Inadmissibility Pursuant to Section 212(h) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(h).

ON BEHALF OF PETITIONER:



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

The applicant is a 53-year-old native and citizen of the El Salvador. The applicant has resided in the United States for nearly 30 years. In 1975, she was convicted of Attempted Entry with Counterfeit Documents. In 1997, she was convicted twice of Petty Theft. She 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) as an alien convicted of a crime involving moral turpitude. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and presently seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that she may adjust her status to lawful permanent resident of the United States.

The district director concluded that the applicant had not established that her inadmissibility would result in extreme hardship to her U.S. citizen or lawful permanent resident children. *See* Decision of the District Director, dated December 28, 2005. On appeal, the applicant contends that the director erred in reaching this conclusion. *See* Form I-290B, Notice of Appeal, filed January 26, 2006 and Applicant's Appellate Brief. The applicant, through counsel, maintains that her U.S. citizen and lawful permanent resident children will face extreme financial, psychological and emotional hardship should she be denied the waiver. *Id.* In support of her appeal, the applicant submits her children's and grandchildren's birth certificates and permanent resident card, declarations signed by her children and a family friend, a rent receipt, and employment and tax documents.

Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), states, in pertinent part:

- (i) Except as provided in clause (ii), any 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 . . . is inadmissible.

Section 212(h) of the Act, 8 U.S.C. § 1182(h), provides, in pertinent part:

The [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

- (1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that --
 - (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
 - (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
 - (iii) the alien has been rehabilitated; or

- (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 before the AAO contains a copy of the criminal records relating to the applicant's 1997 Petty Theft. The applicant does not dispute the district director's finding of inadmissibility based on her criminal convictions. The AAO thus affirms the director's finding that the applicant is inadmissible as charged under section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A).

Having found that the applicant is inadmissible, the AAO must now determine whether the applicant is eligible for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h).

The applicant filed her Form I-485, Application to Register Permanent Residence or Adjust Status, in July of 2002. Fifteen years had not yet elapsed since she committed the crime for which she was convicted in 1997. As such, the applicant is not eligible for a waiver of inadmissibility under section 212(h)(1)(A) of the Act, 8 U.S.C. § 1182(h)(1)(A). The question remains whether the applicant is eligible for a waiver under section 212(h)(1)(B) of the Act, 8 U.S.C. § 1182(h)(1)(B), on the basis of a claim of hardship to her U.S. citizen or lawful permanent resident children. The AAO finds that she is not.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's children would face extreme hardship if the applicant is refused admission. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is refused admission or removed from the United States. Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant's children rises to the level of extreme. The AAO notes that the applicant's children are in their 20s or 30s, and have their own families. The applicant's children state that the applicant assists them with child care, and that her assistance allows them to work and provide for their families. The AAO recognizes the close family bond between the applicant, her children and grandchildren. The AAO further notes that the applicant's daughter shares her home with the applicant, each paying half the monthly rent. The AAO finally notes that the applicant has been well-employed for many years. The record also contains evidence of her children's employment. The AAO notes that there is no evidence that the applicant or her family members suffer from any chronic or serious medical conditions. The record also does not include any evidence suggesting that the applicant's relatives or friends cannot provide financial and emotional support to each other in her absence. The AAO finds that the applicant has failed to establish that her children would suffer extreme hardship should the waiver be denied.

The AAO notes that the applicant's family does not state whether they would relocate with the applicant or remain in the United States, should the waiver be denied. The AAO notes that the applicant's family is not required to relocate to El Salvador, given their U.S. citizenship and lawful permanent resident status. The AAO recognizes that relocation to El Salvador may result in a lower standard of living and limited opportunities. The AAO finds that such hardships are common for individuals in the applicant's circumstances and do not rise to the level of extreme. *See Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient"). Likewise, the AAO recognizes that separation from the applicant may cause hardship, yet there is no evidence in the record to suggest that the hardship this family would experience rises to the level of extreme. *See Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent

a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances”).

The AAO has evaluated the applicant's hardship claims individually and in the aggregate. Although the AAO acknowledges the applicant's claims that her spouse and children would experience hardship if the waiver application is denied, the AAO finds that their hardship is typical for any person in their circumstances and does not rise to the level of "extreme" as required by the statute. The AAO finds that the applicant failed to establish extreme hardship to her children as required under section 212(h) of the Act, 8 U.S.C. § 1182(h).

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility rests 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.