

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

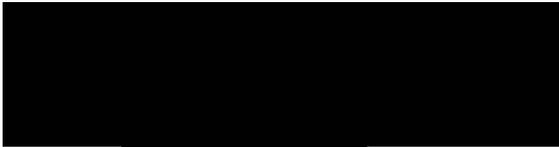
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529-2090
MAIL STOP 2090



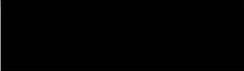
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2



FILE



Office: LOS ANGELES, CA

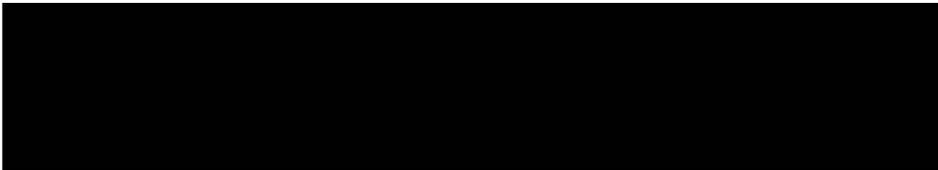
Date: OCT 30 2008

IN RE: Applicant:



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, 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, a native and citizen of El Salvador, was found 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 multiple crimes involving moral turpitude. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his U.S. citizen spouse and children, born in 1996 and 2001.

The district director concluded that 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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated June 28, 2006.

In support of the appeal, counsel submits the Form I-290B, Notice of Appeal (Form I-290B); an attachment to the Form I-290B; a letter from the applicant's spouse, dated July 25, 2006; an addendum to the Form I-601; a copy of the applicant's marriage certificate; and copies of the applicant's children's U.S. birth certificates. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2)(A)(i)(I) of the Act provides, in pertinent part:

[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:

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 . . . ¹

Regarding the applicant's grounds of inadmissibility, the record reflects the commission of multiple crimes involving moral turpitude. In February 1993, the applicant was convicted of forgery, a violation of section 484f(2) of the California Penal Code. The applicant was placed on probation for a period of twelve months and a sentence of three days imprisonment was imposed. In December 1993, the applicant was convicted of receiving stolen property, a violation of section 496(a) of the California Penal Code. He was placed on probation for three years and a sentence of 240 days imprisonment was imposed. In May 2001, the applicant was convicted of burglary, a violation of section 459 of the California Penal Code. He was placed on probation for three years and a sentence of 187 days imprisonment was imposed. As the aforementioned crimes were committed after the applicant's eighteenth birthday, the district director correctly found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. ² The applicant is eligible for a section 212(h) waiver of the bar to admission.

A section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the inadmissibility bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son or daughter of the applicant. Hardship the applicant himself experiences upon removal is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen spouse and children.

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 O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) the BIA held that:

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.

This matter arises in the Los Angeles District Office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have

¹ Section 212(h) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. If extreme hardship is established, CIS must then assess whether to exercise discretion.

² The AAO notes that the applicant does not dispute the district director's finding that these offenses constituted crimes involving moral turpitude.

stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

The applicant’s spouse asserts that she and her children will suffer emotional and psychological hardship were the applicant removed from the United States. As stated by the applicant’s spouse,

My kids are happy here.... They been with their dad [the applicant] all their lives. They love him. He takes care of them. He picks them up from school, he takes them to soccer practice, and games. He is with them most of the time. He works early morning so he can get out of work early so my kids don’t suffer anything. He cooks them food. I work in the day as a nanny, I have been 4 years in this job.... All I ask is that we need my husband [the applicant] to stay with us here. We need him in everything... He is dedicated to his kids and me....

I married my husband because I love him. He is my best friend. He is a great father and the kids love him and need him. Emotionally we would be destroyed without ..

Letter from [redacted], dated July 25, 2006.

The record indicates that the applicant plays an important role in his wife’s and children’s lives; however, the record fails to document what specific hardships the applicant’s children would face without the applicant’s presence. Counsel has failed to establish that the applicant’s spouse would be unable to assume the applicant’s current responsibilities to the children without experiencing extreme hardship. Moreover, although the applicant’s spouse asserts that she and the children would be emotionally destroyed were the applicant physically absent from their lives, no documentation has been provided from a mental health professional that establishes that the applicant’s spouse and/or child would suffer extreme emotional and/or psychological hardship were the applicant to relocate abroad due to his inadmissibility. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Although the depth of concern and anxiety over the applicant’s immigration status is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of “extreme hardship,” Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The current state of the law, viewed

from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases.

The applicant's spouse further contends that the she and the children will suffer financial hardship if the applicant were removed. As stated by the applicant's spouse,

We both work to give our kids what they need..

Id. at 2.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, “[e]conomic disadvantage alone does not constitute “extreme hardship.” *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (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.”); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, “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.”); *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); *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, counsel has provided no evidence with the appeal that establishes the applicant's current financial contributions to the household, and thus has failed to establish that the applicant's absence, and the subsequent loss of the applicant's income, will cause extreme financial hardship to the applicant's spouse and/or the children. In addition, counsel does not explain why the applicant would be unable to obtain employment abroad and assist in supporting his spouse and children were he removed. While the applicant's spouse may need to make alternate arrangements with respect to her job, the household finances and the care of her children, it has not been shown that such alternate arrangements would cause her extreme hardship.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates with the applicant abroad based on the denial of the applicant's waiver request. The applicant's spouse asserts as follows:

If my husband [the applicant] goes back to El Salvador we would have to try and go with him. It would be very hard for my kids and me because there is no future in El Salvador for them. I don't know what kind of work I can do there because I have never worked in El Salvador before. I am from Guatemala.

In the USA I also have two aunts and my mom. We all live close and also my mom is really sick. In Guatemala I have only two uncles, and no more family in Guatemala.

I wouldn't like to go away from my mother because she has Leukemia. She knows that she has that for about 2 years, but ever since the doctor told her that she decided not to get treatment and not to see the doctor anymore because she is afraid. I think she will need medical treatment soon.... When she finally goes to treatment I will need to help her....

I have no dad. Sine I was little I never lived with him, I always lived with my mom and I do not wish to leave her alone....

My husband is from El Salvador and I do not know if he can live in Guatemala. I do not know if I can go live in El Salvador. We have no close family in either Guatemala or El Salvador....

Id. at 1.

No documentation has been provided by counsel to establish that were the applicant's spouse and children to relocate to Guatemala or El Salvador, they would experience extreme hardship. As referenced above, assertions without supporting documentation do not suffice to establish extreme hardship. In addition, although the applicant's spouse references her mother's medical situation, no letter from the applicant's mother's treating physician has been provided to establish the gravity of the situation and what hardships the applicant's spouse's mother would face without the applicant's spouse's presence, thereby causing extreme hardship to the applicant's spouse. Moreover, it has not been established that the applicant's spouse and/or children would be unable to travel to the United States on a regular basis to visit with family. Finally, no documentation has been provided that establishes that the applicant and/or his spouse would be unable to obtain employment abroad, thereby ensuring financial viability for the family.

As such, 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 and/or children would suffer extreme hardship if he were removed from the United States, and moreover, the applicant has failed to show that his U.S. citizen spouse and/or children would suffer extreme hardship were they to relocate to another country were the applicant removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing 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. 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. The waiver application is denied.