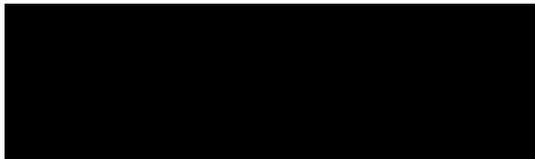


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



HK

FILE:



Office: LOS ANGELES, CA Date:

NOV 20 2006

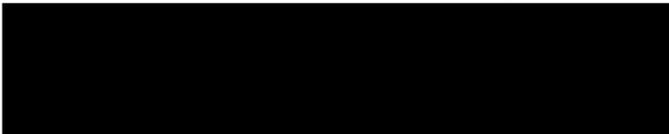
IN RE:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(2)(A).

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 cursive script, 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 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 a crime involving moral turpitude. The applicant is the father of two U.S. citizens and the spouse of a U.S. citizen. He seeks 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 wife and children.

The Director concluded that the assertions provided in the affidavit of the applicant's spouse and the evidence in the record does not support a finding that the applicant's spouse would experience extreme hardship other than the common hardships faced by families in a similar situation should he be removed from the United States. *Decision of the District Director*, dated March 15, 2005.

On appeal, counsel asserts that the District Director failed to properly weigh the evidence, abused her discretion in denying the applicant's waiver application and failed to consider the intent behind the section 212(h) waiver. Counsel also asserts that the applicant was only convicted of one crime and this crime qualifies for the petty offense exception. *Counsel's Appeals Brief*, dated May 11, 2005.

The record indicates that the applicant has a history of two convictions: one conviction for corporal injury to a spouse under California Penal Code (PCP) 273.5(a) on April 30, 1991 and one conviction for theft of property under CPC 484(A), a misdemeanor, on June 17, 1994. The AAO notes that the court dispositions submitted by the applicant reflect that he plead guilty and was convicted of theft on June 17, 1994, for actions that occurred on May 22, 1994.

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) states in pertinent part that:

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-

(1)(A) [I]t is established to the satisfaction of the Attorney General that-

(i) [T]he 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 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 actions leading up to the applicant's conviction for corporal injury to a spouse occurred on April 30, 1991, more than 15 years from the current date. However, the applicant has a second conviction for theft that occurred less than 15 years from the current date. For this conviction the applicant is eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(B) of the Act. A section 212(h)(B) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship the alien himself experiences due to separation is irrelevant to section 212(h)(B) waiver proceedings unless it causes hardship to the applicant's spouse and/or children. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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 BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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 AAO notes that extreme hardship to the applicant's spouse and/or children must be established in the event that they reside in Guatemala or in the event that they reside in the United States, as they are not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse and/or children in the event that they reside in Guatemala. Counsel states in her brief that the applicant's spouse entered the United States when she was 16 years old and has resided in the United States for 30 years. The applicant's spouse's entire family resides in the United States. She states that the applicant's 2 daughters, ages fourteen and fifteen years old, were born and raised in the United States and are fully immersed in American culture and education. The AAO finds that the applicant's children would suffer extreme hardship as a result of

relocating to Guatemala. Relocation to Guatemala could have a severe impact on the children's education and ability to prosper because they are not familiar with the Guatemalan culture. In *Matter of Kao*, 23 I&N Dec. 45 (BIA 2001), the Board of Immigration Appeals found that adolescents would suffer extreme hardship as a result of relocating to a country where they do not know the culture or the language. Thus, the record does reflect that relocation to Guatemala will result in extreme hardship to the applicant's children.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse and children remain in the United States. Counsel states in her brief that the applicant is the sole income earner in the family and that without the applicant's income the applicant's family would lose their home and would be forced to receive government assistance. The AAO notes that counsel submitted no documentation to support her claims. The record contains no budgetary documentation or documentation showing that the applicant's spouse would be unable to find work while their teenage daughters were in school. Counsel also asserts that the applicant's spouse and daughters would suffer extreme emotional hardship as a result of being separated from the applicant. Again, counsel provided no documentation to show the extent of the emotional hardship the applicant's family would suffer. The AAO recognizes that the applicant's spouse and children will endure hardship as a result of separation from the applicant. However, their situation, if they remain in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

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.

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)(B) 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.