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U.S. Citizenship
and Immigration
Services

[Redacted]

FILE:

[Redacted]

Office: PHOENIX DISTRICT OFFICE Date:

IN RE:

[Redacted]

DEC 13 2004

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 244(c)(2)(A)(ii) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(c)(2)(A)(ii)

ON BEHALF OF APPLICANT:

[Redacted]

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

Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The waiver application was denied by the District Director, Phoenix. 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 El Salvador, applying for temporary protected status (TPS) under § 244 of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1254. The applicant was found to be inadmissible to the United States pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering into a fraudulent marriage in order to obtain a benefit under the Act. The AAO notes that the applicant is currently under a removal order, although he was released under an Order of Supervision on January 2, 2002.

The district director found that the applicant had failed to establish eligibility for a waiver of inadmissibility because the applicant failed to establish that the waiver in question should be granted for humanitarian purposes, to assure family unity, or in the public interest. The application was denied accordingly. On appeal, counsel asserts that the applicant has established eligibility for this waiver due to weak country conditions in El Salvador and concerns for his U.S. citizen daughter's well-being.

Section 244(c)(2) of the Act provides, in pertinent part:

(A) Waiver of certain grounds of inadmissibility.—

...

(ii) except as provided in clause (iii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

8 U.S.C. § 1254(c)(2).

The AAO notes that El Salvador has experienced considerable improvement in human rights conditions since the time of the applicant's departure from that country in 1992. There is no evidence that the applicant would be in danger or at risk in El Salvador due to his status as a former soldier. *See U.S. Department of State Country Reports on Human Rights Practices, El Salvador* (February 25, 2004). In 2003, the Secretary of Homeland Security (Secretary) re-designated El Salvador for purposes of temporary protected status (TPS) under INA § 244, 8 U.S.C. § 1254. The secretary explained that the 18-month extension was necessary because, due to economic and social problems caused by environmental disasters, El Salvador was temporarily unable to absorb a large influx of returnees from other countries. It appears that El Salvador was re-designated for TPS based on concerns regarding the negative effects of a mass re-integration of expatriates within the context of that country's weakened infrastructure. 68 Fed. Reg. 42071-42074 (July 16, 2003). The contention that the instant waiver should be granted in the applicant's humanitarian interests, on account of Salvadoran country conditions, is unpersuasive.

The record reflects that the applicant has a U.S. citizen daughter of approximately five years of age. Counsel states that the waiver should be granted in order to allow the applicant to remain in the United States in the interest of family unity. However, there is no evidence that the applicant's daughter cannot relocate with him to El Salvador. Thus, it does not appear that, in order to maintain family unity, the applicant must be allowed to stay in the United States. Counsel also contends that it is in the public interest to grant the waiver in this

case, as the applicant's daughter would experience extreme hardship should he be removed. The record, however, contains no evidence to support this claim.

The evidence does not establish that humanitarian interests mandate a grant of the waiver of inadmissibility. Because the applicant is statutorily ineligible for the waiver, the AAO need not analyze the issue of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 244(c)(2)(A), the burden of establishing that the application merits approval 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.