U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

FILE: [redacted] Office: BALTIMORE, MARYLAND Date: JUN 22 2004

IN RE: Applicant: [redacted]

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: SELF-REPRESENTED

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador 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 and section 212(a)(2)(B) of the Act, 8 U.S.C. § 1182(a)(2)(B), for having been convicted of 2 or more offenses for which the aggregate sentences to confinement were 5 years or more. The applicant is the beneficiary of an approved petition for alien relative filed by his U.S. citizen spouse. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may remain in the United States and reside with his U.S. citizen spouse and children.

The Interim District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon his qualifying family members. The application was denied accordingly. *See Interim District Director's Decision* dated July 24, 2003.

Section 212(a)(2) of the Act states in pertinent part, that:

> (A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
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> > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.
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> . . . .
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> (B) Multiple criminal convictions.-Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

> (h) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> . . . .
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> > (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 record reflects that on June 22, 1992, in the Circuit Court of the County of Prince William Commonwealth of Virginia, the applicant was convicted for the offense [redacted] and was sentenced to five years imprisonment. The record further reflects the following criminal record: June 11, 1990, convicted of "Drunk in Public", sentenced to pay a fine; and August 16, 1991, convicted of "Strike, Beat and Assault Complainant without Cause", sentenced to 180 days imprisonment. The applicant is inadmissible to the

United States due to his conviction of a crime involving moral turpitude (grand larceny) and his multiple convictions for which the aggregate sentences to confinement were five years or more.

The applicant's conviction of grand larceny is also an aggravated felony for immigration purposes.

Section 101(a)(43) of the Act defines the term "aggravated felony":

> (G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment at least 1 year.

Section 212(h) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) or 212(a)(2)(B) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 the present case, the applicant must demonstrate extreme hardship to his U.S. citizen spouse or children.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the BIA deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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 extend 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.

On appeal the applicant's spouse [redacted] submits an affidavit and states that she and her children would suffer emotional and financial hardship if the applicant were not permitted to remain in the United States. [redacted] states she will become a single parent, required to care for and support her children and unable to afford day care due to her limited financial resources. She further states that she will be forced to file for bankruptcy and welfare. [redacted] states that the applicant's criminal record occurred over 12 years ago, he is a hard working and loving father and husband, and he deserves a second chance.

[redacted] submitted documentation regarding her financial situation in an effort to establish that she and her children would suffer extreme hardship if the applicant's waiver application were not approved. The record reflects that the applicant's spouse is employed part time but there is no documentary evidence to show why she would not be able to work full time in order to provide for herself and her children. [redacted] states that she and the applicant are looking to purchase a house in order to avoid paying rent and to be able to pay off debts. Presently they are living with [redacted] parents and no reason was provided as to why they cannot assist by baby-sitting their grandchildren.

Although the applicant alleges financial hardship in this matter, in *Shooshtary v INS,* 39 F.3d 1049 (9th Cir. 1994), the court stated that the "extreme hardship requirement of section 212(h)(2) of the Act 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 record of proceedings does not make it clear whether the applicant's spouse and children will follow him to El Salvador if he were removed. If the applicant is removed to El Salvador his U.S. spouse and children would suffer hardship, but there is no indication that this will impact them at a level commensurate with extreme hardship. If and children were to accompany the applicant to El Salvador, it would be expected that some economic, linguistic and cultural difficulties would arise. No evidence exists that Ms. and her children would not be able to adjust to life in El Salvador if they were to relocate with the applicant.

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. 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 all the factors presented, and the aggregate effect of those factors, indicates that the applicant's spouse and children would suffer hardship due to separation. The applicant has failed, however, to show that his qualifying relatives would suffer extreme hardship over and above the normal social and economic disruptions involved if the applicant was not permitted to remain in the United States at this time. 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.