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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: LOS ANGELES, CALIFORNIA Date: MAR 23 2005

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. 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 Guatemala who entered the United States without inspection or admission in 1986. The record indicates that the applicant is married to a U.S. citizen and that he is the beneficiary of an approved petition for alien relative. The applicant was found to be inadmissible to the United States pursuant to § 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 seeks a waiver of inadmissibility in order to reside with his wife and children in the United States.

The district director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relatives. The application was denied accordingly. On appeal, counsel asserts that the applicant's wife and children will follow him to Guatemala, resulting in "exceptional and extreme unusual hardship" to them. In support of his assertions, counsel submits statements by the applicant's wife, mother, father, and parents-in-law, a U.S. State Department Guatemala Country Report on Human Rights Practices for 2002, and other documentation.

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 applicant was convicted of possession of a firearm on school grounds, in violation of California Penal Code § 626.9(b), and drawing or exhibiting a firearm, in violation of California Penal Code § 417(a)(2), on December 21, 1993, less than 15 years prior to the adjudication of his application for adjustment of status. The applicant is therefore statutorily ineligible for a waiver pursuant to § 212(h)(1)(A) of the Act. He is, however, eligible to apply for a waiver of inadmissibility pursuant to § 212(h)(B) of the Act.

The AAO notes that, although the applicant had been charged with four different counts, he pled guilty to and was convicted of only two of the counts. The district director's statement that the applicant was convicted of four counts is, therefore, incorrect. Nevertheless, the applicant's crimes are considered to be crimes involving moral turpitude.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (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. These factors included the presence of a lawful permanent resident (LPR) 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.

U.S. court decisions have additionally 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. Moreover, 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.

The applicant's wife, who is originally from Guatemala, writes that she came to the United States when she was four years old, and she has no friends or relatives in Guatemala. She writes that she is very close to her family members, who live in the United States, but that she would not consider leaving her husband alone. She would not remain in the United States if the applicant were removed. The applicant's wife states that her children, aged eight and five years old, would not receive a proper education in Guatemala. She also asserts that if she relocates to Guatemala to remain with the applicant, she and the applicant will not be able to provide for their children's medical expenses. She contends that she and the applicant would suffer financially, as they risk being unable to find employment in Guatemala, given that country's weak economy.

The applicant's LPR mother and father state that the applicant provides for them financially, and they will not be able to survive without his presence. They state that if the applicant and his family move to Guatemala, they will also suffer emotionally, as it will be very difficult to visit with and communicate with the applicant and their grandchildren.

There is no documentation on the record to establish that the applicant's wife, children, or parents would suffer extreme hardship if they remain in the United States. Although his parents state that he provides for them financially, there is no evidence that he supports his parents or that they have no other source of income. The evidence does not establish that the applicant's wife would be unable to make necessary financial adjustments, or that the applicant would not be able to contribute to his family's needs if he is in Guatemala. The AAO notes that the country conditions report supplied does not establish that the applicant himself will be unable to find employment in Guatemala. In addition, the record does not support assertions that communication with persons in Guatemala is inordinately expensive, or that the cost of travel to that country would render visits with the applicant unlikely.

Although the applicant's wife is not required to accompany him to Guatemala, she feels obligated to do so. Nevertheless, there is no documentation regarding the applicant's wife's contention that her children would be unable to adjust to life in Guatemala or that they would have to repeat grades in school there. The record does not establish that the applicant's wife would be unable to find a job in Guatemala. The country conditions report constitutes evidence of the socio-political problems in Guatemala, but it does not establish the applicant's wife's claims regarding their own situation. The applicant has not established that his qualifying family members would suffer extreme hardship in Guatemala.

Although the AAO recognizes that the applicant's inadmissibility causes his qualifying family members sadness and anxiety, their reaction to this difficult situation is not extreme. 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 children or LPR parents would suffer hardship that was unusual or beyond that which would normally be expected upon removal. 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 § 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.