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

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FILE: [redacted] Office: CHICAGO Date: NOV 17 2006

IN RE: [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:

[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, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Chicago, Illinois, denied the waiver application, and it 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 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 two crimes involving moral turpitude. The applicant is the spouse of a naturalized U.S. citizen and the father of three U.S. citizen children. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his spouse and children.

The district director concluded 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 March 15, 2005.

The record reflects that, on March 22, 1995, the applicant was convicted of two counts of forgery/counterfeit seal in violation of section 472 of the California Penal Code (CPC). The applicant's sentence was suspended and he was sentenced to 3 days in jail and 2 years of probation.

On March 6, 2002, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On appeal, counsel contends that the applicant's spouse and children would suffer extreme hardship. *See Applicant's Brief* dated May 12, 2005. In support of the appeal, counsel submitted the above-referenced brief, affidavits from the applicant and his spouse, the applicant's children's birth certificates, dental and insurance documentation, financial records, a death certificate for the applicant's brother, a sworn statement from the applicant's mother, school records for the applicant's eldest daughter and documents previously provided. The entire record was reviewed and considered in rendering a decision in this case.

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

> (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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if –
>
> . . . .
>
> (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 district director based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's admission to and convictions for forgery/counterfeit seal, crimes involving moral turpitude. Counsel does not contest the district director's finding of inadmissibility.

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(h) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse, parent, son or daughter of the applicant.

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 at 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

> 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).

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).

The record reflects that, on June 11, 1999, the applicant married his naturalized U.S. citizen spouse, [redacted] is a native of Mexico who became a lawful permanent resident in 1988 and a naturalized U.S. citizen in 200[redacted] has an eleven-year old daughter from a previous relationship who is a U.S. citizen by birth. The applicant and [redacted] also have a six-year old daughter and a four-year old daughter who are both U.S. citizens by birth. The record reflects further that the applicant and [redacted] are in their 30's and [redacted] may have some health concerns.

Counsel contends that [redacted] and her children will suffer extreme hardship because [redacted] will be unable to financially support her family without the applicant's income, especially since she would have the additional expenses of health insurance, which is now obtained through the applicant's employment, child

care and the costs associated with her daughter's orthodontic braces [redacted] in her affidavit, asserts that she and her children would suffer extreme hardship if she were to remain in the United States without the applicant because she would be unable to pay all of the family's expenses, including the costs of health care, child care and orthodontic work for her daughter. [redacted] also states that her eldest daughter has required additional attention at home in regard to her schoolwork, which she would be unable to provide without the assistance of the applicant. Finally [redacted] tates that the children are very close to the applicant and would suffer deeply from the separation from him, as would she.

While it is unfortunate that [redacted] y be unable to maintain the family's current standard of living and may have to lower the family's standard of living, the record does not contain any evidence to suggest that [redacted] would be unable to financially support her and the children without the financial support of the applicant. The record indicates that [redacted] arns approximately $23,017 per year. The record shows that, even without assistance from the applicant, [redacted] earns sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines,* http://aspe.hhs.gov/poverty/figures-fed-reg.shtml. While it is unfortunate that [redacted] would essentially become a single parent and professional childcare may be an added expense and not equate to the care of a parent, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. The record does not support a finding of financial loss that would result in an extreme hardship to [redacted] nd her children if [redacted] had to support herself and her children without additional income from the applicant, even when combined with the emotional hardship described below.

While an affidavit from a social worker indicates that [redacted] as been treated for depression in the past and is concerned that her depression would return if the applicant were denied the waiver, there is no evidence to confirm that [redacted] or the applicant's children suffer from a physical or mental illness that would cause them to suffer hardship beyond that commonly suffered by aliens and families upon deportation. While it is unfortunate that the applicant's children will essentially be raised in a single-parent environment and [redacted] may not have much time to spend in aiding her eldest daughter with her homework, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation. Additionally, the record indicates that [redacted] has family members, such as her parents and siblings, in the United States who may be able to assist her emotionally in the absence of the applicant.

Counsel contends tha[redacted] and her children would suffer extreme hardship if they accompanied the applicant to Guatemala because they do not have any strong family ties in Guatemala, they would have to adjust to a new language and culture, the children would not have the same educational opportunities as they would have in the United States, and the family would be subject to death threats the applicant received prior to his entry to the United States and which resulted in the murder of his brother. [redacted] in her affidavit, states that she and her children would suffer extreme hardship if they were to accompany the applicant to Guatemala because they would be separated from friends and family in the United States, especially her mother who is ill from diabetes, they would lose all of the opportunities they have in the United States, especially her children, who would lose educational opportunities, and the family would be subject to death threats the applicant received prior to his entry to the United States and which resulted in the murder of his brother. The applicant, in his affidavit, states that his wife and children would suffer extreme hardship because the children would have to adjust to a new language, his wife and children are not familiar with the culture and customs of Guatemala, his children would be unable to pursue the same educational opportunities

as they would have in the United States and the family would be subject to death threats the applicant received prior to his entry to the United States and which resulted in the murder of his brother.

The documentation in the record indicates that the threats made against the applicant and his brother occurred in 1990 as a result of civil-war related thefts committed by the military and that the applicant's brother died in 1994, after which the applicant's family members relocated to another part of Guatemala. There is no evidence in the record to suggest that these threats are ongoing. Country conditions reports establish that, in 1996, the civil war of Guatemala ended with the signing of the Peace Accords. Country conditions reports indicate that the guerrillas have been disbanded and have been integrated into the political and economic life of the country and that the military is no longer committing human rights abuses such as what happened to the applicant's brother. *Department of State Country Reports on Human Rights, Guatemala, 2005,* www.state.gov/g/drl/rls/hrrpt/2005/61729.htm; www.globalsecurity.org/military/world/war/guatemala.htm; www.state.gov/r/pa/ei/bgn/2045.htm. Additionally, the AAO notes that the applicant and his spouse did not claim that their family would be targeted for death threats until after the Form I-601 was denied and that there was no mention of any such problems in the affidavit or social worker report, which the applicant submitted with the Form I-601.

There is no evidence in the record to suggest that the applicant and [redacted] would be unable to find *any* employment in Guatemala. There is no evidence in the record to confirm that [redacted] mother suffers from diabetes or that her illness is such that she requires [redacted] physical or financial support. There is no evidence in the record to suggest that [redacted] or her children suffer from a physical or mental illness for which they would be unable to receive treatment in Guatemala. While the hardships faced by [redacted] and her children with regard to adjusting to a lower standard of living, a new culture, language, economy, environment and separation from friends and family are unfortunate, they are what would normally be expected with any spouse or child accompanying a deported alien to a foreign country. Moreover, while it would be unfortunate that [redacted] and the applicant's children would not have the opportunities that are available to them in the United States, these are hardships that would normally be expected with any family accompanying a deported alien to a foreign country. Additionally, the AAO notes that, even if counsel had established [redacted] and the applicant's children would suffer extreme hardship by accompanying the applicant to Guatemala, as U.S. citizens, the applicant's spouse and children are not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, [redacted] and the applicant's children would not experience extreme hardship if they remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse and children would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [redacted] and the applicant's children will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse or father is removed from the United States. 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 point made in this and prior decisions on this matter is that 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. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *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). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse and children as required under section 212(h) of the Act, 8 U.S.C. § 1186(h). 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 an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.