U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: LOS ANGELES Date: FEB 26 2007

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 waiver application was denied by the District Director, Los Angeles, and 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 a crime involving moral turpitude. The applicant is further deemed inadmissible pursuant to section 212(a)(2)(D)(i) of the Act due to being convicted for an act of prostitution within 10 years of his entry to the United States and application for adjustment of status. The applicant 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 child.

The district director concluded that the applicant 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 December 23, 2004.

On appeal, counsel for the applicant contends that the applicant's U.S. citizen wife and child will experience extreme hardship if separated from the applicant, and thus the application should be approved. *Statement from Counsel Submitted with Appeal*, dated January 11, 2005.

The record contains a statement from counsel; a statement from the applicant's wife; a psychological evaluation of the applicant, his wife, and child from a clinical psychologist; a copy of the applicant's birth certificate; a copy of the applicant's wife's birth certificate; a copy of the applicant's marriage certificate, and; documentation in connection with the applicant's criminal conviction. The entire record was reviewed and considered in rendering this decision.

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-
>
> (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(a)(2)(D)(i) [redacted] states in pertinent part that:

> (D) Prostitution and commercialized vice.-Any alien who-
>
> (i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status [is inadmissible].
>
> . . . .

(F) Waiver authorized.- For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h).

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

(h) The Attorney General [now Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), [or] (D) . . . of subsection (a)(2)
. . . if - . . .

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(1) the alien is inadmissible only under subparagraph (D)(i). . . of such subsection . . . 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 record reflects that on May 29, 1997 the applicant was convicted of robbery under California Penal Code § 211. He was sentenced to 360 days of incarceration.

California Penal Code § 211 defines robbery as follows:

Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

The word "felonious" is defined as follows:

A technical word of law which means done with intent to commit a crime, *i.e.* criminal intent. Of the grade or quality of a felony, as, for example, a felonious assault (*q.v.*). Malicious; villainous; traitorous; malignant. Proceeding from an evil heart or purpose. Wickedly and against the admonition of the law; unlawfully.

Blacks Law Dictionary at 428 (6th Ed. 1983).

Thus, the act of robbery proscribed by section 211 of the California Penal Code includes a criminal intent. Based on the foregoing, robbery under section 211 of the California Code is deemed a crime involving moral turpitude. Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The record further reflects that on December 15, 1999 the applicant pled guilty to one count of prostitution under section 657(B) of the California Penal Code, for which he was sentenced to 12 months of probation and a fine in lieu of five days of incarceration. Accordingly, the applicant is deemed inadmissible pursuant to section 212(a)(2)(D)(i) of the Act due to being convicted for an act of prostitution within 10 years of his entry to the United States and application for adjustment of status.

Regarding his prostitution conviction, the applicant is not eligible for an exercise of discretion pursuant to section 212(h)(1)(A)(i) because he is inadmissible under another ground of inadmissibility. The applicant is, however, eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(1)(B).[1]

Section 212(h)(1)(B) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. Hardship the applicant himself experiences due to his inadmissibility is irrelevant to section 212(h) waiver proceedings; the only relevant hardship regarding the applicant's request for a waiver under section 212(h)(1)(B) of the Act is hardship suffered by the applicant's wife and child. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h)(1)(B) of the Act.

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 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.

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).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[w]hen the BIA fails to give considerable, if not predominant, weight

[1] The district director indicated that the present waiver application falls under section 212(i) of the Act. However, the applicant is eligible to apply for a waiver under section 212(h) of the Act, as noted above. Accordingly, hardship to both the applicant's wife and child will be considered pursuant to section 212(h) of the Act.

to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant's wife and daughter would likely remain in the United States if the applicant departs. Separation of family will therefore be carefully considered in the assessment of hardship factors in the present case.

The applicant's wife stated that she and the applicant's daughter will experience significant hardship if the applicant is prohibited from remaining in the United States. *Statement from Applicant's Wife*, dated November 21, 2002. The applicant's wife provided that the applicant is supportive of her ambition to work as a certified nursing assistant. *Id.* at 1. She further stated that the applicant is supportive of his daughter's schooling and he helped find a head start program for her. *Id.* The applicant's wife expressed that she and the applicant's daughter will suffer emotional hardship if the applicant departs, as they are very close to him and they will be "stranded." *Id.* at 2. The applicant's wife stated that she has no family in Guatemala, and she does not "see how [she] could move there." *Id.* The applicant's wife indicated that she and the applicant's daughter "depend on [the applicant] emotionally and financially." *Id.* at 3.

The applicant provided an evaluation of him, his wife, and daughter from Dr. [redacted] a clinical psychologist. Dr. [redacted] primarily focused on the applicant's lack of a propensity to commit further criminal acts. *Report from Dr.* [redacted], dated November 18, 2002. Dr. [redacted] stated that the applicant's wife is a certified nursing assistant, and she is beginning a program toward her Licensed Vocational Nurse certification. *Id.* at 1. Dr. [redacted] indicated that the applicant's wife and daughter are both emotionally dependent on the applicant being present in their lives. *Id.* at 3. Dr. [redacted] stated that he perceived the applicant's wife to be "a self-sufficient woman who has a strong drive and good survival instincts." *Id.*

Upon review, the applicant has failed to show that his wife or daughter will suffer extreme hardship should he be prohibited from remaining in the United States. The applicant's wife indicates that she and the applicant's daughter are close with the applicant, and they will suffer emotional hardship should the applicant be compelled to depart the United States. Dr. [redacted] indicated that the applicant's wife and daughter are emotionally dependent on the applicant. However, the statements in the record regarding emotional hardship to the applicant's wife and child are brief and lack sufficient detail to clearly show that such consequences go beyond those which are commonly experienced by the families of aliens deemed inadmissible, such that the applicant's family members will endure emotional consequences that rise to the level of extreme hardship.

U.S. court decisions have 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 applicant's wife stated that she and the applicant's daughter are dependent on the applicant financially. However, the record shows that the applicant's wife is a certified nursing assistant, thus it is presumed that she is capable of earning sufficient income to meet her and her daughter's economic needs. As noted above, Dr. [redacted] stated that he perceived the applicant's wife to be "a self-sufficient woman who has a strong drive and good survival instincts." Thus, it appears that the applicant's wife will be capable of working in the applicant's absence. Further, the record contains no documentation to reflect the applicant's or his wife's current income. Nor has the applicant submitted an account of his regular household expenses or his wife's current assets. Thus, the AAO lacks sufficient information to assess the true economic impact the applicant's departure would have on his wife and daughter. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the applicant has not established that his wife and daughter will suffer significant financial hardship should he depart the United States.

The applicant's wife suggested that she and the applicant's daughter would not relocate abroad with the applicant should he depart the United States. She stated that she and the applicant have no family in Guatemala. However, based on the evidence in the record, the applicant has not shown that his wife or daughter would suffer extreme hardship should they remain in the United States. Thus, the applicant has not established that the denial of his wavier application "would result in extreme hardship to [his] United States citizen . . . spouse . . . or daughter," as required by section 212(h)(1)(B) of the Act.

All prospective hardships to the applicant's wife or daughter have been considered separately and in aggregate. Based on the foregoing, the record does not contain sufficient evidence to establish that the instances of hardship that will be experienced by the applicant's wife and daughter should the applicant be prohibited from remaining in the United States rise to the level of extreme hardship. While they will endure some economic adjustment and they will lose the companionship of the applicant should they remain in the United States, the record suggests that they will continue to have sufficient economic means to meet their needs and they will not endure extreme psychological detriment. 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) 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.