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U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: WASHINGTON, DC Date: JUL 13 2010

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael Rhew

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Washington, District of Columbia, 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. The director stated that the applicant was inadmissible under section 212(a)(2)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(B), for having been convicted of multiple offenses for which the aggregate sentences to confinement were 5 years or more. The director indicated that the applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel contends that El Salvador has crime and gang problems, and that Temporary Protected Status (TPS) has been accorded to nationals of El Salvador for safety reasons. Counsel maintains that the education of the applicant's U.S. citizen children as well as their healthcare and that of his wife will be in jeopardy in El Salvador. He asserts that the director failed to properly consider the submitted psychological evaluation. Counsel declares that the applicant's strongest ties are to the United States due to his having lived here since 1986 and the presence of his immediate family members, who are either lawful permanent residents or U.S. citizens. Counsel avers that the applicant and his family members will have no future in El Salvador because of its crime and due to the poor probability of obtaining a job that has a sufficient income to support the family. Counsel declares that the totality of the evidence demonstrates that the applicant and his wife and children will experience extreme hardship if he is not granted lawful permanent resident status.

Section 212(a)(2)(B) of the Act provides that:

> (B) Multiple criminal convictions
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> 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.

The record reflects that the applicant was convicted of two criminal offenses for which the aggregate sentences of confinement were five years. On October 23, 1992, in the [redacted] County, Virginia, the applicant pled guilty to and was found guilty of attempted robbery. On November 24, 1992, the court ordered that the applicant serve five years in the penitentiary, which term was suspended four years and eight months conditioned upon the applicant's good behavior and agreement to probation. On August 5, 1994, the applicant pled guilty to and was found guilty and convicted of violation of section 18.2-266 of the Virginia code, which states that it is unlawful for any person to drive or operate any motor vehicle, "[w]hile such person has a blood alcohol concentration of 0.10 percent or more; or while under the influence of alcohol; or while under the influence of drugs or other intoxicants; or a combination of the above." The applicant was ordered to pay a fine and his driver's license was suspended for 12 months. Due to the aggregate sentence to

confinement of five years for the attempted robbery and driving while intoxicated convictions, the director was correct in finding the applicant inadmissible under section 212(a)(2)(B) of the Act.

The waiver for inadmissibility under section 212(a)(2)(B) of the Act is found under section 212(h) of the Act. That section 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 -
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> (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –
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> (i) . . . the 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 . . .

Section 212(h)(1)(A) of the Act provides that the Attorney General may, in his discretion, waive the application of subparagraph (B) of subsection (a)(2) if the 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. Since the applicant's convictions occurred in October 1992 and August 1994, which is more than 15 years ago, they are waivable under section 212(h)(1)(A)(i) of the Act.

Section 212(h)(1)(A)(ii) and (iii) of the Act requires that the applicant's admission to the United States not be contrary to the national welfare, safety, or security of the United States; and that the applicant establish his rehabilitation. Evidence in the record to establish the applicant's eligibility under section 212(h)(1)(A)(ii) and (iii) of the Act consists of letters, income tax records, and a psychological evaluation. Dr. [redacted] psychological evaluation conveys that the applicant has a close relationship with his U.S. citizen son and that he is his nine-year-old son's sole means of financial support. Dr. [redacted] reports that the applicant provides financial support for his daughter from a prior marriage who lives in El Salvador with her mother, and for his siblings living in El Salvador. Letters by co-workers commend the applicant's character. In view of the record, which shows that the applicant has not committed any crimes since those which have rendered him inadmissible, and that he has financially supported his son and daughter, the AAO finds that the applicant has provided sufficient evidence to demonstrate that his admission to the United States is not contrary to the national welfare, safety, or security of the United States, and that he has been rehabilitated, as required by section 212(h)(1)(A)(ii) and (iii) of the Act.

Once eligibility for a waiver is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996). A favorable exercise of discretion is limited

in the case of an applicant who has been convicted of a violent or dangerous crime. Specifically, 8 C.F.R. § 212.7(d) states:

> The Attorney General, in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

The applicant's conviction for attempted robbery qualifies as a violent or dangerous crime under 8 C.F.R. § 212.7(d).[1] Accordingly, the applicant must show that "extraordinary circumstances" warrant approval of the waiver. 8 C.F.R. § 212.7(d). Extraordinary circumstances may exist in cases involving national security or foreign policy considerations, or if the denial of the applicant's admission would result in exceptional and extremely unusual hardship. Finding no evidence of foreign policy, national security, or other extraordinary equities, the AAO will consider whether the applicant has "clearly demonstrate[d] that the denial of . . . admission as an immigrant would result in exceptional and extremely unusual hardship" to a qualifying relative.

In the instant case, the applicant must demonstrate that denial of admission would result in exceptional and extremely unusual hardship to a qualifying relative, who are the applicant's U.S. citizen daughter and minor son. We note that the record conveys that the applicant's wife is illegally in the United States, as the adjustment of status application reflects that she sought to adjust status as a derivative alien through the applicant. Furthermore, we observe that the applicant's wife is not eligible for employment in the United States due to her illegal status. In view of the illegal status of the applicant's wife and the profound impact on the applicant's minor son if he remains in the United States without his father, the AAO finds that the applicant's son would experience "exceptional and extremely unusual hardship" if he remained.

With regard to joining the applicant to live in El Salvador, counsel avers that the applicant will be unable to obtain employment in El Salvador that will adequately support his family members, that they their safety will be at risk due to gangs and crime, and that his children's education and health

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[1] The Supreme Court of Virginia in *George v. Commonwealth of Virginia*, 242 Va. 264, 277, 411 S.E.2d 12, 20 (1991), stated that in Virginia the offense of robbery is defined at common law "as the taking, with intent to steal, of the personal property of another, from his person or in his presence, against his will, by violence or intimidation." (citing *Pierce v. Commonwealth*, 205 Va. 528, 532, 138 S.E.2d 28, 31 (1964)).

care will suffer. The AAO notes that El Salvador was designated for TPS in March 2001 due to the devastation caused by a series of severe earthquakes that occurred in January and February of 2001.[2] The TPS designation for El Salvador has been extended through September 9, 2010 because: "there continues to be a substantial, but temporary, disruption of living conditions in El Salvador resulting from the series of earthquakes that struck the country in 2001 . . . ." [3] Nevertheless, no documentation has been presented to show that the applicant will be unable to obtain a job in El Salvador that will ensure his family will not live in poverty, and no documentation has been furnished to prove that the education and healthcare available to the applicant's children will be of a lower caliber to what they now have, or that they will be subjected to gang-related violence or criminal activity.

Even when considering El Salvador's designation for TPS and the asserted hardship factors cumulatively, which are concern about healthcare, education, safety, and obtaining employment, the AAO finds that the applicant has not met his burden of proving that his children would suffer exceptional and extremely unusual hardship if they were to join him to live in El Salvador. The applicant has not demonstrated that the evidence in the record in the aggregate shows that the hardships of relocation produce a "truly exceptional situation" that would meet the exceptional and extremely unusual hardship standard. *See Matter of Monreal-Aguinaga*, 23 I&N Dec. 56 at 62. Accordingly, the hardships to the applicant's children that arise from relocation do not meet the heightened hardship standard set forth in 8 C.F.R. § 212.7(d).

Accordingly, the applicant failed to demonstrate that he merits a favorable exercise of discretion under 8 C.F.R. § 212.7(d), and the appeal will be dismissed.

ORDER: The appeal is dismissed.

[2] Federal Register: October 1, 2008 (Volume 73, Number 191).

[3] *Id.*