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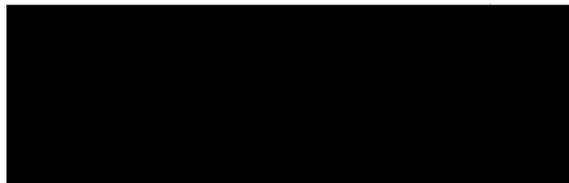
U.S. Department of Homeland Security  
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U.S. Citizenship  
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FILE:

Office: LOS ANGELES

Date: AUG 18 2006

IN RE:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Los Angeles, California, 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 crimes involving moral turpitude. The applicant is the spouse of a U.S. citizen and the son of lawful permanent resident parents. 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 parents.

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 November 22, 2004.

The record reflects that, on July 10, 1995, the applicant was convicted of felony burglary and was sentenced to 3 years of probation with 180 days in jail. On the same day, the applicant was also convicted of felony receiving or concealing stolen property and was sentenced to 3 years of probation.

On January 12, 1996, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on his mother's approved Petition for Alien Relative (Form I-130) filed on her behalf by the applicant's father. The record shows that the applicant appeared at Citizenship and Immigration Services' (CIS) Los Angeles District Office on April 26, 1996. The applicant admitted that he had been convicted of felony burglary and receiving or concealing stolen property.

On January 12, 2001, 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, the applicant asserts that his wife is experiencing a difficult pregnancy and would experience extreme hardship if he were to be removed to Guatemala. *See Applicant's Brief* dated December 10, 2004. In support of the appeal, the applicant submitted the above-referenced brief, a new affidavit from his wife, a doctor's letter in regard to the applicant's spouse's pregnancy and copies of documentation previously submitted. The entire record was reviewed and considered in rendering a decision in this case.

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

(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 . . . 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), (B) . . . 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 felony burglary and receiving or concealing stolen property, crimes involving moral turpitude. The applicant does not contest the district director's determination 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 September 25, 1999, the applicant married his spouse, [REDACTED] [REDACTED] is a native of Guatemala who became a lawful permanent resident in 1993 and a naturalized U.S. citizen in 2000. It appears that the applicant and [REDACTED] may have two one-year old

twin children who are U.S. citizens by birth. The applicant's father [REDACTED] [REDACTED], is a native and citizen of Guatemala who became a lawful permanent resident in 1989. The applicant's mother, [REDACTED] is a native and citizen of Guatemala who became a lawful permanent resident in 1997. The applicant and [REDACTED] are in their 30's, the applicant's father is in his 70's, the applicant's mother is in her 60's and the applicant's spouse may have some health concerns.

[REDACTED] and [REDACTED] in their affidavits, assert that they will suffer hardship if the applicant is removed to Guatemala because the applicant will no longer have the opportunities and standard of living he experiences in the United States. Financial records indicate that, in 1995, [REDACTED] earned approximately \$15,409. The record reflects that [REDACTED] and [REDACTED] have family members in the United States, such as their five other adult children, who may be able to provide financial assistance in the absence of the applicant. The record shows that, even without assistance from family members, [REDACTED] has, in the past, earned sufficient income to exceed the poverty guidelines for his family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. There is no evidence in the record to suggest that [REDACTED] or [REDACTED] suffer from a physical or mental illness that would cause [REDACTED] or [REDACTED] to suffer hardship beyond that commonly suffered by aliens and families upon deportation.

[REDACTED], in her affidavits, asserts that she and her children would suffer extreme hardship if they were to remain in the United States without the applicant because she is experiencing difficulties with her pregnancy and the applicant would be unable to assist her throughout and after her pregnancy and also because she is unable to work and would be unable to meet the family's expenses.

There is evidence in the record that [REDACTED] has previously been employed as an assistant teacher. While the medical letter submitted indicates that in December 2004 [REDACTED] was placed on bed rest until her due date in March 2005, there is no evidence in the record to confirm that [REDACTED] is unable to work due to an illness. There is no evidence in the record to reflect the applicant or [REDACTED] income or household expenses. While it is unfortunate that [REDACTED] would essentially become a single parent and professional childcare may be expensive and may 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. Moreover, according to the record, [REDACTED] has family members in the United States who may be able to support her financially and physically in the absence of her husband. The AAO notes that the applicant and [REDACTED] reside with the applicant's parents, which may ease [REDACTED] financial burdens. While it is unfortunate that Ms. [REDACTED] and her children may have to lower their standard of living, such economic loss, even when combined with the emotional hardship discussed below, does not constitute extreme hardship.

As discussed above, the medical letter indicates that [REDACTED]'s bed rest requirement would terminate after delivery. The medical letter does not give a prognosis for [REDACTED]'s health conditions and there is no evidence in the record to suggest that she or the children would require medical treatment post-delivery. There is no evidence in the record to confirm that [REDACTED] or the 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. Additionally, [REDACTED] has family members in the United States who may be able to provide emotional support in the absence of the applicant.

The applicant, [REDACTED] and [REDACTED] do not assert that [REDACTED] or the applicant's children would suffer hardship if they returned to Guatemala with the applicant. The AAO is, therefore, unable to find that [REDACTED] or the applicant's children would experience hardship should they choose to join him in Guatemala. Additionally, the AAO notes that, as U.S. citizens or lawful permanent residents, [REDACTED] or the applicant's 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, they would not suffer extreme hardship if they were to remain 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, parents or children would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] Recinos and the applicant's children will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse, son 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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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 or his lawful permanent resident parents 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.