

Identifying data deleted to
prevent clearly unwarranted
intrusion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

FILE:

[REDACTED]

Office: LOS ANGELES (SANTA ANA), CA Date:

IN RE:

[REDACTED]

JAN 09 2006

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles (Santa Ana), 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 El Salvador 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 (burglary). The record indicates that the applicant has a U.S. citizen spouse, three U.S. citizen children and one lawful permanent resident child. The applicant seeks a waiver of inadmissibility in order to reside with her family in the United States.

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 Excludability. *Decision of the District Director*, dated March 12, 2004.¹

On appeal, counsel asserts that the applicant's spouse and children will suffer extreme hardship if she is removed from the United States. *Form I-290B*, dated April 2, 2004.

The record contains counsel's brief, the applicant's criminal record, employment documentation for the applicant's spouse, school letters for the applicant's children, the applicant's diploma and letters of support for the applicant. The entire record was reviewed and considered in arriving at a decision on the appeal.

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) 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) . . . of subsection (a)(2) . . . if-

¹ The district director's decision states that the waiver is under section 212(i) of the Act and starts the paragraph with section 212(i) of the Act. The AAO notes that section 212(i) of the Act deals with inadmissibility due to fraud or misrepresentation. However, the decision then cites the language of section 212(h) of the Act. There is not a clear indication as to which section the applicant was found inadmissible under. As the record contains evidence that the applicant was convicted of a crime involving moral turpitude, but contains no evidence of fraud or misrepresentation, the AAO will render a decision based on a waiver under section 212(h) of the Act. A subsequent paragraph states that only the effects on the U.S. citizen spouse can be considered. This is contrary to section 212(h) of the Act which considers hardship to both the spouse and children of the applicant. Furthermore, the section which is cited, 8 C.F.R. 240.58, does not appear to exist.

-
- (1)(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 AAO notes that section 212(h) 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. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) the Board of Immigration Appeals (BIA) provided a list of factors it deems relevant in determining whether an alien has established extreme hardship. These factors included, but are not limited to, the presence of lawful permanent resident or United States citizen family ties to 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to one of the qualifying relatives must be established in the event that they relocate to El Salvador or in the event that they remain in the United States, as they are not required to reside outside of the United States based on denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of relocation to El Salvador. The AAO notes that El Salvador is currently designated under the Temporary Protected Status (TPS) program due to a series of severe earthquakes that left over a quarter of the country's population without housing and significantly damaged the infrastructure of the country. *Federal Register*, Vol. 67, No. 133, pp. 46000, Thursday, July 11, 2002, Notices. Under the TPS program, citizens of El Salvador are allowed to remain in the United States temporarily due to the inability of El Salvador to handle the return of its nationals due to the disruption of living conditions. As such, requiring the applicant's U.S. citizen family members to relocate to El Salvador in its current state would constitute extreme hardship.

The AAO also finds that the applicant's two youngest children, ages 15 and 11, would face extreme hardship independent of the TPS-related finding of extreme hardship. The record indicates that the children are integrated into the U.S. lifestyle and educational system. Counsel states that the two youngest children have never lived outside of the United States, speak limited Spanish and are unable to read or write in Spanish. *Brief in Support of Appeal*, at 5. The BIA found that a fifteen-year-old child who lived her entire life in the United States, was completely integrated into the American lifestyle and was not fluent in Chinese would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The AAO finds *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern.

The second part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event that they remain in the United States. Counsel states that the applicant's spouse has been married to the applicant for about four years, they have known each other for eighteen years and the applicant's spouse would suffer emotional damage as they have not lived apart while married. *Brief in Support of Appeal*, at 4-7, dated April 1, 2004. Counsel states that the applicant's spouse will be compelled to live in the United States to support the entire family and that the applicant's spouse's income is insufficient to meet the financial responsibilities of the family which include mortgage, phone, gas, water and grocery expenses. *Id.* However, there is no documentation to verify this assertion.

Counsel states that the applicant and her spouse play an active role in their children's lives and provide a stable environment where they are encouraged to excel in academics and athletics. *Id.* at 7. Counsel asserts that the children will suffer extreme hardship psychologically. *Id.* However, there is no evidence to support this assertion. The AAO notes that the assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Based on the evidence presented, the record does not show that a qualifying relative will suffer extreme hardship by remaining in the United States.

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.

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 AAO notes that a review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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. 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.