

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

H2

[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES, CA

Date: JUN 05 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:

[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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who was found to be inadmissible to the United States under 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 the spouse of a lawful permanent resident of the United States and the parent of a citizen of the United States and a lawful permanent resident of the United States. She is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that she may reside in the United States with her 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 Excludability (Form I-601) accordingly. *Decision of District Director*, dated December 15, 2004.

On appeal, counsel states that Citizenship and Immigration Services (CIS) erred by applying a standard of exceptional and extremely unusual hardship rather than the statutorily provided standard of extreme hardship. Further, counsel contends that CIS failed to review all of the evidence submitted in support of the application and failed to evaluate the hardship imposed on the applicant's daughter even though section 212(h) allows for consideration of hardship imposed on a United States citizen child of the applicant. *Form I-290B*, dated January 6, 2005. In support of these assertions, counsel submits a brief; copies of all previously submitted documentation; a copy of a deed of trust for property owned by the applicant and her spouse; a score report for a basic skills test administered to the applicant's daughter; a copy of a permanent resident card issued to the applicant's other daughter and a country condition report for Honduras, dated February 25, 2004. The entire record was reviewed and considered in rendering a decision on the applicant's appeal.

The applicant's criminal record is outlined in the decision of the district director and is not contested by counsel on appeal.

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 -
 - (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 . . .

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Any hardship suffered by the applicant herself is irrelevant to waiver proceedings under section 212(h) of the Act. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include 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.

Counsel contends that the applicant's spouse and youngest child would suffer extreme hardship as a result of relocating to Honduras to remain with the applicant. Counsel asserts that the applicant's spouse is a longtime resident of the United States and a native of Mexico as opposed to Honduras. *Brief in Support of Appeal*, 9, dated January 27, 2005. Counsel indicates that Honduras is an impoverished country that holds diminished opportunities for the applicant's spouse and child. *Id.* In support of this assertion, counsel submits a copy of a United States Department of State report for Honduras indicating that approximately two thirds of the country's households live in poverty. *Id.* Counsel states that further hardship would be imposed on the applicant's spouse as a result of bringing the couple's daughter to reside in Honduras owing to the violence, sexual harassment and malnutrition that characterize the country's culture. *Id.*; see also *Country Reports on Human Rights Practices – 2003, Honduras*, United States Department of State, Respect for Human Rights, Section 5 Discrimination Based on Race, Sex, Disability, Language, or Social Status ("Violence against women remained widespread.").

While the record evidences that extreme hardship may be imposed on the applicant's spouse and daughter as a result of relocating to Honduras in order to remain with the applicant, the record fails to establish that extreme hardship would be imposed on the applicant's spouse and daughter as a result of remaining in the United States in the absence of the applicant in order to maintain residence in a safe country with sufficient educational and employment opportunities. Counsel contends that the applicant's spouse and child will suffer emotionally and psychologically as a result of separation from the applicant. Counsel indicates that the applicant's spouse and child were evaluated by a psychologist and states that the psychologist concluded that separation from the applicant "may lead to debilitating depression [for the applicant's spouse].... This in turn would gravely affect his ability to function as a father and to possibly even maintain his current job." *Brief in Support of Appeal* at 10-11. The AAO notes that the submitted psychological evaluation is based on a single meeting between the evaluating psychologist and the applicant's spouse and child. See *Psychological Evaluation by* [REDACTED] dated August 6, 2001. The record fails to provide documentation

evidencing an ongoing relationship between the applicant's spouse and/or child and a mental health professional. The majority of the submitted evaluation is allotted to summarizing the life histories of the applicant's spouse and daughter as reported to the evaluating psychologist. The portion of the report that is devoted to analysis and conclusions is based on an isolated encounter and does not reflect the observations of a mental health professional as developed over a period of time treating the applicant's spouse and child. As a result, the submitted evaluation is of limited relevance to a determination of extreme hardship based on psychological suffering and the AAO finds that the conclusions of the evaluation as characterized by counsel are speculative. While it would be regrettable if the applicant's spouse experienced a "debilitating depression" as a result of separation from the applicant, the fact that this situation "may" arise does not constitute evidence sufficient for a finding of extreme hardship.

The AAO acknowledges counsel's submission of a deed of trust for property owned by the applicant and her spouse as well as evidence that the applicant's older daughter is now a lawful permanent resident of the United States. *Brief in Support of Appeal* at 18. In the absence of an articulated assertion establishing the relevance of these documents, the AAO is unable to consider their significance to a finding of extreme hardship.

The AAO further acknowledges counsel's assertion that the applicant's child has never been separated from her mother or her father. *Brief in Support of Appeal* at 13-14. While the AAO is sympathetic to the circumstances encountered by the applicant and her family, U.S. court decisions have repeatedly 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 AAO recognizes that the applicant's spouse and child would likely endure hardship as a result of separation from the applicant. However, their situation, if they remain in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and child 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. *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.