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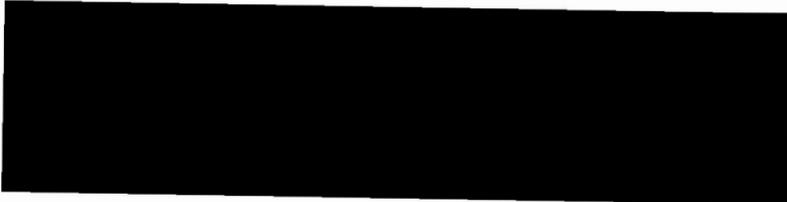
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FILE: [REDACTED] Office: LOS ANGELES, CALIFORNIA Date: MAR 29 2006

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:



**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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles, 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 Guatemala who entered the United States without inspection in 1977. The applicant is married to a naturalized U.S. citizen and is the beneficiary of an approved petition for alien relative. He was found to be inadmissible to the United States pursuant to § 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 seeks a waiver of inadmissibility in order to reside with his wife and children in the United States.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and children. The application was denied accordingly. On appeal, counsel asserts that the applicant's wife will suffer extreme physical, financial, and emotional hardship, and his children will suffer financially and emotionally if he is removed from the United States, whether or not they accompany him to Guatemala. In addition, the applicant expresses remorse for his past actions, and his wife expresses her forgiveness. The record includes court records, medical documentation, statements by the applicant and his family members, counsel's brief, and other documentation. The AAO has reviewed the entire record in rendering this decision.

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) states in pertinent part that:

- (h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-
  - (1)(A) [I]t is established to the satisfaction of the Attorney General that-
    - (i) [T]he 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; 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 applicant was convicted of drunk driving in 1980, 1983, 1986, and 1989, and of infliction of corporal injury on his wife in 1986, 1989, 1990, 1992, and 1994. The latter two crimes, which involve moral turpitude, were committed less than fifteen years prior to this application for adjustment of status. The applicant is therefore statutorily ineligible for a waiver pursuant to § 212(h)(1)(A) of the Act. He is, however, eligible to apply for a waiver of inadmissibility pursuant to § 212(h)(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.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> 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 (9<sup>th</sup> 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 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 applicant has been cohabitating with his wife since 1979, and they have five children together, ranging in age from twenty seven to fifteen. The record reflects that the applicant's spouse is originally from Mexico, and that she became a naturalized U.S. citizen in 1999. The applicant's two teenage daughters live with him and depend on him financially, as does his wife, who has been unemployed since 1998. The medical documentation on the record indicates that the applicant's wife suffers from hearing loss, mildly elevated liver enzymes, and gynecological complaints. There is no indication that she follows a specialized course of treatment for any of her conditions. There also is no medical or other documentation establishing any disability that would prevent her from working or otherwise carrying out normal daily activities.

Counsel indicates that in Guatemala the applicant's wife would be faced with with numerous difficulties, including adjusting to a different culture, lower standards of health care, and a lower standard of living. The record contains country conditions information indicating that Guatemala suffers from problems inherent in developing nations, but there is no documentation to establish that the applicant's wife would be unable to obtain suitable medical care or accustom herself to life in Guatemala. If the applicant's teenage daughters

accompany him to Guatemala, they may encounter difficulties relating to their continuing education, and it is possible that such a move could cause them extreme hardship in that respect.

Counsel also contends that the applicant's U.S. citizen wife and children would suffer severe emotional hardship if he were separated from them. The AAO recognizes that the separation of family members is likely to cause negative emotional consequences; however, the record contains no documentation indicating that the psychological effect of the applicant's absence on the applicant's wife and children would be greater than usual. Counsel also asserts that the the applicant's immediate family would suffer severe financial hardship, as he supports them. The record does not establish that the applicant would be unable to secure employment in Guatemala or that the applicant's wife would be unable to cope with the potential financial challenges or lifestyle changes. The AAO notes that the applicant has three adult children in the United States, and there is no information on the record indicating that they are unable to contribute to the family's finances. In sum, the totality of the documentation in the record does not establish that if they remain in the United States, the applicant's U.S. citizen spouse and children would suffer hardship that was unusual or beyond that which would normally be expected in similar situations.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion. In proceedings for application for waiver of grounds of inadmissibility under § 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.