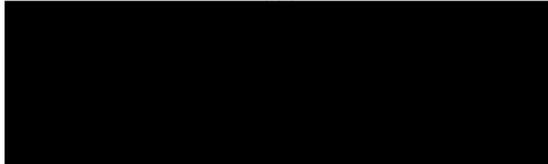


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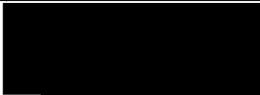
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FILE:



Office: CHICAGO, IL

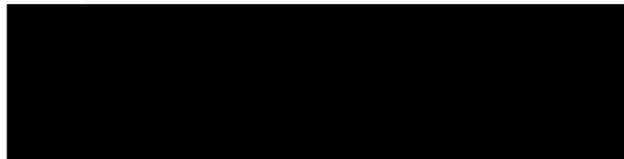
Date: **NOV 17 2006**

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:



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, Chicago, IL. 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 Belize 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. The record indicates that the applicant is the son of two U.S. citizens and has three U.S. citizen children. The applicant seeks a waiver of inadmissibility in order to reside with his parents and children in the United States.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen parent. The application was denied accordingly. *See District Director Decision*, dated September 24, 2004.

On appeal, counsel states that the director erred when he stated that hardship to the applicant's children could not be considered in his application for a waiver. In addition, the director erred in his assessment of hardship in the applicant's case. *Form I-290B*, dated October 27, 2004.

The record indicates that the applicant was convicted of Theft-Unauthorized Control of greater than \$300 but less than \$10,000, a felony, on November 22, 1993.

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 actions leading up to these convictions occurred less than 15 years from the present time. The applicant is therefore statutorily ineligible for a waiver pursuant to section 212(h)(1)(A) of the Act. He is however, eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(B) of the Act.

A section 212(h)(B) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship the alien himself experiences due to separation is irrelevant to section 212(h)(B) waiver proceedings unless it causes hardship to the applicant's parents and/or children. The AAO notes that the District Director did err in stating that the Service was unable to consider hardship to the applicant's U.S. citizen children. 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 AAO notes that extreme hardship to the applicant's parents and/or children must be established in the event that they reside in Belize or in the event that they reside in the United States, as they are not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to his parents and/or children in the event that they reside in Belize. In his brief, counsel states that the applicant's children are, 17, 15 and 9 years old. He states that the children have always lived and studied in the United States, they are familiar only with life in the United States and they do not know any other family but their family in the United States. The applicant's mother also states that it would be difficult for the applicant to support his children in Belize because there are no employment opportunities there for people who do not have a college degree or a special skill. She also states that the children would suffer by relocating to Belize because all of their family is in the United States and, they have never lived anywhere else but the United States. The applicant's mother asserts that she is suffering emotionally from the thought of being separated from her grandchildren if they are forced to move to Belize or Mexico, where the applicant's spouse is a citizen. She also asserts that the children's mother's family in Mexico is very poor and her siblings are disabled. In support of his asserts, counsel submits country reports for Belize and Mexico. The country report for Belize shows that the minimum wage in Belize is generally not sufficient to support a worker and his family. The country reports also show that education for children who are not from wealthy families is substandard and there is limited health care available for people without enough funds to pay. The AAO finds that the applicant's children would suffer extreme hardship as a result of relocating to Belize. Relocation to Belize could have a severe impact on the children's education and ability to prosper because they are not familiar with the culture in Belize. They have spent their entire lives in the United States. In *Matter of Kao*, 23 I&N Dec. 45 (BIA 2001), the Board of Immigration Appeals found that adolescents would suffer extreme hardship as a result of relocating to a country where they do not know the culture or the language.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his parents and/or children remain in the United States. In her statement, the applicant's mother asserts that the

applicant is her only child that owns a home and that she plans to move to Chicago and live with the applicant when she can no longer take care of herself. The AAO notes that the applicant's mother currently lives in Los Angeles with the applicant's brother. The applicant's mother also states that the applicant sends her money, which she needs to survive. The AAO notes that the applicant's mother provided no evidence to show that the applicant's brother, who she currently resides with, could not provide for her needs upon the applicant's removal.

Counsel asserts that if the applicant is removed from the United States his family will no longer receive health care because their health care coverage is currently through the applicant's employer. Copies of medical insurance cards were submitted, but the applicant did not show that his children would have no other way to obtain health care. The applicant's son [REDACTED] submitted a letter dated November 4, 2003, which states that he is 14 years old and attends McCarrell Christian Academy. The applicant's son states that his father pays for his education and he will no longer be able to attend school if his father returns to Belize. The applicant's son also explains how the applicant is a large part of his life. The AAO notes that although the applicant's son may not be able to attend his current school in the event that the applicant is removed, there is no evidence in the record to show that he would not be able to attend another, comparable school. Counsel states that the children will suffer emotionally and psychologically if the applicant is removed because they are dependent on the applicant. The AAO notes that no documentation was submitted concerning the specific details and the extent of the children's emotionally suffering. The applicant did submit an employer letter from [REDACTED] President of REID Enterprises, which states that the applicant works 40 hours per week and earns \$13.25 per hour. He also occasionally receives overtime pay at 1 ½ times his regular pay. The applicant also submitted copies of his monthly expenses including his mortgage payment, electric bill, telephone bill, water bill and credit card bill. These bills totaled approximately \$1800 per month. However, no documentation was submitted regarding the applicant's spouse and her role in the children's life. There is no evidence showing if she is incapable of working, if she has family members in the United States and if so, could they help her with expenses if the applicant is removed from the United States. The AAO recognizes that the applicant's parents and children will 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 removal and does not rise to the level of extreme hardship.

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.

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