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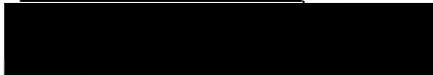


FILE:

Office: CALIFORNIA SERVICE CENTER

Date: APR 10 2008

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 Director, California Service Center. 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 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 (forgery in the second degree). The record indicates that the applicant's spouse is a U.S. citizen. The applicant seeks a waiver of inadmissibility in order to reside with his spouse in the United States.

The director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Director's Decision*, dated December 7, 2006.

On appeal, counsel asserts that objective evidence demonstrates that the applicant's spouse will suffer extreme hardship and she has been bonded emotionally and psychologically to the applicant since she was fifteen years old. *Form I-290B*, received January 5, 2007.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's mother's statement, the applicant's spouse's medical records, information on polycystic ovarian disease, information on Guatemala, photographs of the applicant's family and a statement from the applicant's spouse. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant pled guilty to forgery in the second degree (Section 53a-139 of the Connecticut Penal Code) in relation to an arrest on December 23, 1997. The crime of forgery is a crime involving moral turpitude. *Matter of Seda*, 17 I & N Dec. 550 (BIA 1980). As the applicant was convicted of a crime involving moral turpitude, he is inadmissible to the United States pursuant to section 212(a)(2)(A) of the Act.<sup>1</sup>

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:

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<sup>1</sup> The record also reflects that the applicant was arrested for larceny on September 28, 1997, although he was not convicted of this offense. The AAO notes that the applicant answered "no" in response to the question of whether he had ever been arrested on his adjustment of status application. *Applicant's Form I-485, Application to Register Permanent Residence or Adjust Status*, at 3, received March 25, 2002. As a result of this misrepresentation, the applicant would also be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

(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)(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, in this case, the applicant’s spouse. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

Counsel cites *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), a case used by the AAO in adjudicating extreme hardship waivers that lists relevant factors for the extreme hardship analysis. These factors included 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 the applicant’s spouse must be established in the event that she relocates to Guatemala or in the event that she remains in the United States, as she is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event of relocation to Guatemala. Counsel states that the applicant’s spouse was born in the United States, has lived her entire life in the United States, has no relatives in Guatemala (other than the applicant’s) and most of her U.S. citizen family members live in adjacent communities. *Brief in Support of Appeal*, at 2, undated. Counsel states that 75 percent of Guatemala lives below the poverty level and the per capita income is \$4,900, which pales compared to the applicant’s and the applicant’s spouse’s joint income of \$46,200. *Id.* at 3. Counsel states that the applicant’s spouse suffers from polycystic ovarian disease and this disease causes infertility, insulin resistance and weight gain. *Id.* Counsel states that Guatemala only allocates \$112 per capita on health, health resources are exceptionally inadequate in Guatemala, the applicant’s spouse will be unable to obtain suitable medical care, and she will likely be unemployed and unable to pay for medical services. *Id.* Counsel states that pursuant to information from the World Health Organization, the mortality rate for individuals under the age of 60 in Guatemala is significantly higher than in the United States and if not closely monitored, the applicant’s spouse is at high risk of developing sterility, high blood pressure, diabetes, endometrial cancer and breast cancer. *Id.* at 4. The record includes substantiating evidence of the

applicant's spouse polycystic ovarian disease, characteristics of the disease and general economic statistics presented by counsel. However, the record offers no evaluation by a healthcare professional of the risks that the applicant's spouse would face if she were to relocate to Guatemala, and therefore, fails to demonstrate that the health of the applicant's spouse would be jeopardized by such a move. The record also fails to establish that the applicant's spouse would be unable to receive medical treatment in Guatemala or that she and/or the applicant would be unable to financially support themselves. Based on the entire record, the applicant has not demonstrated that his spouse would face extreme hardship if she relocated to Guatemala.

The second part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she remains in the United States. As mentioned previously, the applicant's spouse has polycystic ovarian disease. The record does not include evidence of whether her condition would become worse without the applicant's presence. The applicant's spouse's mother states that the love between the applicant and her daughter is immeasurable, they have been trying to conceive a child, the applicant's deportation will be like a death in the family, her daughter tends to be a sad person and her daughter's life should not be shattered. *Applicant's Spouse's Mother's Statement*, at 1, dated January 31, 2007. The applicant's spouse states that she has known the applicant since high school, she is afraid of becoming a single mother if he is not able to remain in the United States, they have a good relationship, the most important thing in their lives is their love for each other and the applicant supports them financially. *Applicant's Spouse's Statement*, dated October 11, 2006. The AAO notes, however, that separation as a result of removal commonly creates emotional stress and financial and logistical problems. The record does not distinguish the hardships facing the applicant's spouse from those confronting other individuals who have been separated from family members by removal. In addition, the record does not include substantiating evidence of the claimed emotional, financial or other relevant hardship. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Therefore, the record does not demonstrate extreme hardship to the applicant's spouse should she remain in the United States without the applicant.

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 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.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to demonstrate that his U.S. citizen spouse or children would suffer hardship that is unusual or beyond that which would normally be encountered upon removal. Having found the applicant statutorily ineligible

for relief, no purpose would be served in an additional discussion of 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.