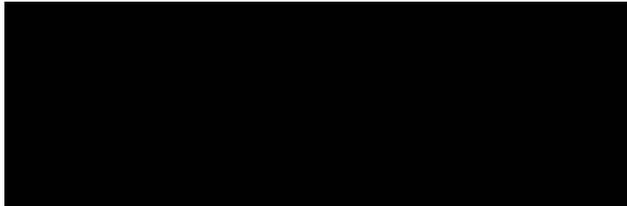


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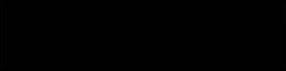
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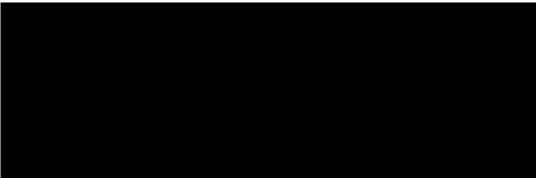
Date: SEP 24 2009

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v), 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Guatemala City, Guatemala, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 67-year-old native and citizen of Guatemala who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The Field Office Director also determined that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of 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 married to a citizen of the United States, and he seeks a waiver of inadmissibility under section 212 of the Act, 8 U.S.C. § 1182, in order to reside with his wife and children in the United States.

The Field Office Director found that the applicant failed to establish extreme hardship to his spouse, and denied the application accordingly. *Decision of the Field Office Director*, dated May 22, 2009. On appeal, the applicant contends through counsel that the denial of the waiver imposes extreme hardship on his spouse and children. *See Form I-290B, Notice of Appeal*, dated June 12, 2009.

The record contains, *inter alia*, a copy of the couple's marriage certificate; birth certificates and/or identification documents for the couple's children and grandchildren; a letter and an affidavit from the applicant's wife; family photos; a letter from the applicant's employer; letters of support; tax forms and financial documents; and documentation related to the applicant's 1986 conviction. The Notice of Appeal indicates that a brief and/or evidence would be submitted to the AAO within 30 days. *See id.* Because no brief or additional evidence was submitted, the record is considered complete, and the AAO shall render a decision on appeal based on the existing record.

Section 212(a)(9)(B) of the Act provides:

(B) Aliens Unlawfully Present -

(i) In general

Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver

The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that

the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

8 U.S.C. § 1182(a)(9)(B).

The record shows that the applicant entered the United States without being inspected and admitted in 1971. *See Order to Show Cause*, dated May 16, 1978. The applicant's spouse, [REDACTED] filed a Petition for Alien Relative (Form I-130) on August 19, 1997, and the former Immigration and Naturalization Service (INS) approved the petition on October 15, 1997. *See Form I-130*. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on March 19, 1999. *See Form I-485*. The former INS rejected the Application to Register Permanent Residence or Adjust Status for lack of jurisdiction on January 28, 2002. *See Letter from the District Director*, dated Jan. 28, 2002. The applicant departed the United States in or around July, 2008. The applicant's unlawful presence for one year or more after April 1, 1997, and departure from the United States triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. *See Matter of Rodarte-Roman*, 23 I&N Dec. 905, 909 (BIA 2006).

Section 212(a)(2)(A)(i)(I) of the Act renders inadmissible "any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of . . . a crime involving moral turpitude . . ." On July 23, 1986, the applicant was convicted of two counts of felony hit and run resulting in death or injury, in violation of section 20001 of the California Vehicle Code. The Superior Court of California sentenced the applicant to 270 days of jail, and 36 months of probation. Although a section 20001 conviction does not categorically qualify as a crime involving moral turpitude based on the plain language of the state statute, *see Cerezo v. Mukasey*, 512 F.3d 1163, 1169 (9th Cir. 2008), the evidence in the record is not sufficient to determine whether the applicant's conviction was the result of conduct that involved moral turpitude, *see id.*; *see also Matter of Silva-Trevino*, 24 I&N Dec. 687, 704 (A.G. 2008) (requiring a modified categorical inquiry to determine whether the record or any additional evidence resolves the moral turpitude question). Because the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for unlawful presence, the AAO determines that a resolution of the moral turpitude issue would serve no purpose at this time.

In order to obtain a section 212(a)(9)(B)(v) waiver for unlawful presence, an applicant must show that the ten-year bar imposes an extreme hardship on the applicant's U.S. citizen or lawfully resident spouse or parent. *See* 8 U.S.C. § 1182(a)(9)(B)(v). Hardship to the applicant, or to his or her children or other family members, may not be considered, except to the extent that this hardship affects the applicant's qualifying relative. *See id.* (omitting consideration of hardship to the applicant and to his or her children). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she accompanies the applicant to the home country, and in the event that he or she remains in the United States. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and the determination is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of

Immigration Appeals (BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: the presence of family ties to U.S. citizens or lawful permanent residents in the United States; family ties outside the United States; country conditions where the qualifying relative would relocate and family ties in that country; the financial impact of departure; and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (per curiam) (“When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.”); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the Act that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

*Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted). However, “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship unless combined with more extreme impact. In *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant’s spouse is a 52-year-old native of Guatemala and citizen of the United States. *See Certificate of Naturalization for* [REDACTED]. The applicant and his wife have been married for 14 years. *See Marriage Certificate*. The couple has two U.S. citizen children. *See Birth Certificates*. Additionally, the applicant and his wife have children from previous relationships, and a number of grandchildren in the United States. *See Birth Certificates and Identification Documents*. The applicant’s spouse asserts that she is suffering emotional and financial hardships as a result of the separation from the applicant. *See Affidavit of* [REDACTED]

In support of the hardship claims, the applicant's wife claims that the separation has caused her "an immense amount of stress" because the "family is very attached to each other, and [her] husband is the glue that binds [them] together." *Id.* [REDACTED] states that she has been with the applicant "for such a long time," the applicant is the "love of [her] life," that and that "it hurts to know that [they] will be apart from each other." *Id.* The applicant's wife also states that the applicant was the sole economic provider in the household, and she fears that she would "not survive without [her] husband's contribution to [the] household." *Id.*; see also *Tax Returns and Financial Documents*. [REDACTED] indicates that she recently obtained an AA degree in child development, but has not yet found employment. See *Letter from* [REDACTED] dated Jan. 1, 2009. [REDACTED] also claims to suffer from arthritis. *Id.*

Although the record suggests that the separation of the family causes various hardships to the applicant's spouse, the evidence presented is not sufficient to support a claim of hardship that rises beyond the common results of removal or inadmissibility to the level of extreme hardship. See *Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. For instance, there is no evidence in the record, such as an ongoing relationship with a mental health professional, or any history of treatment for anxiety or any other significant medical or psychological conditions, to show that the applicant's spouse's emotional hardship is unusual or beyond that which would normally be expected upon removal. See *Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Additionally, the record lacks documentary proof to support the existence and severity of [REDACTED] arthritis. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (requiring supporting documentary evidence in order to meet the burden of proof).

The evidence supports the applicant's claim that he was the sole financial provider before he departed from the United States in 2008. See *Financial Documents*; see also *I-864, Affidavit of Support*, dated July 16, 2008 (indicating that [REDACTED] had been unemployed since 2006). [REDACTED] indicated that she did not work while obtaining her AA degree, and had not obtained employment as of January 1, 2009. See *Letter from* [REDACTED] *supra*. Because the record does not show that [REDACTED] lacks the skills or ability to obtain employment, the change in household finances is insufficient to demonstrate extreme financial hardship. Further, although [REDACTED] claims that she is losing her apartment, there is no documentary evidence in the record to support this assertion. See *Matter of Soffici, supra*. Similarly, there is no documentary evidence supporting [REDACTED] claim that she would have to provide financial support to the applicant in Guatemala. *Id.* Accordingly, while the record supports a claim of economic detriment as a result of the applicant's departure, the evidence does not show that the denial of the waiver would rise to the level of extreme financial hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (holding that the mere showing of economic detriment is insufficient to warrant a finding of extreme hardship).

Regarding potential relocation to Guatemala, the applicant's wife states that her "roots are here and all of [her] immediate family is here in the United States legally." See *Affidavit of* [REDACTED]. She is "extremely close to all of [her] children," and could not bear to be torn from them. *Id.* Additionally, [REDACTED] fears being a victim of violent crime and gangs in Guatemala. See *id.* Finally, [REDACTED] has been a U.S. citizen since 1998, and she contends that she has "assimilated to the life style of the United States," and would not want to go to "a country that has become completely strange" to her. *Id.*

Given the applicant's wife's equities in the United States, it appears that relocation to Guatemala to live with the applicant could impose adjustment difficulties and the hardship of separation from her children and grandchildren. However, the record does not support a finding that these difficulties would be unusual or beyond that which would normally be expected upon relocation. *See Perez*, 96 F.3d at 392. Additionally, there is no documentary evidence in the record regarding country conditions in Guatemala to support the applicant's spouse's fear of violent crime and gang activity. *See Matter of Soffici, supra*.

In sum, although the applicant's spouse has presented some evidence of harm based on family separation and relocation, the record does not contain sufficient evidence to show that the difficulties encountered by the applicant's spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to his spouse, as required under section 212(a)(9)(B)(v) of the Act.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) 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.<sup>1</sup>

**ORDER:** The appeal is dismissed.

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<sup>1</sup> The AAO notes that the Field Office Director denied the applicant's Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) in the same decision. *See Decision of the Field Office Director, supra*. Because the AAO has found the applicant ineligible for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, no purpose would be served in reviewing the denial of the Form I-212.