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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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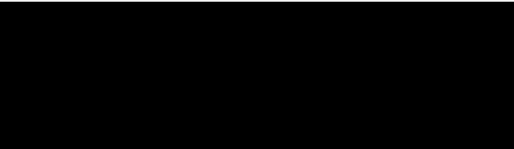
**JAN 21 2010**

IN RE:



PETITION: 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 PETITIONER:



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).

Perry Rhew  
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 Guatemala 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 United States citizen and the father of four United States citizen children. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his 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) on January 24, 2007.

On appeal, counsel asserts that the applicant has established that his spouse and children will suffer extreme hardship if the applicant is removed.

In support of his assertions, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant's spouse; earnings statements and W-2 Forms for the applicant; tax statements for the applicant and his spouse; criminal records and court documents for the applicant; and an employment letter for the applicant's spouse; country conditions materials for Guatemala; and birth, marriage and naturalization certificates for the applicant's spouse and children. The entire record was considered in rendering a decision on the appeal.

The record reflects that on November 7, 1992, the applicant was arrested by the Los Angeles Police Department for Robbery, California Penal Code § 211, and was subsequently convicted for two counts of Robbery on January 28, 1993, and sentenced to three years probation. On February 8, 1994, the applicant was arrested by the Glendale Police Department for Petty Theft with Priors, California Penal Code § 666, and subsequently convicted of that charge on April 7, 1994.

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-

(1) 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) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -

- (i) . . . the 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 [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 crime of Robbery is a crime involving moral turpitude (CIMT). *Matter of Martin*, 18 I. & N. Dec. 226 (BIA 1982). It is noted for the record that the applicant's conduct resulting in his conviction for a CIMT occurred more than 15 years ago as of the date this appeal is being adjudicated. Accordingly, he is eligible for consideration under section 212(h)(1)(A)(i) of the Act.

A review of the record does not indicate that the applicant's admission to the United States would be contrary to the national welfare, safety or security of the United States. Further, it finds that he has been rehabilitated. The applicant has been involved in no criminal activity since 1994, he has a steady work history and has paid his taxes. Accordingly, the AAO finds that he is eligible for a waiver under section 212(h)(1)(A) of the Act.

However, once eligibility for a waiver has been established, it is but one favorable factor to be considered in the determination of whether the Secretary should favorably exercise discretion and grant the waiver. A favorable exercise of discretion is limited in instances where an applicant has been convicted of a violent or dangerous crime. The regulation at 8 C.F.R. § 212.7(d) states:

(d) Criminal grounds of inadmissibility involving violent or dangerous crimes  
The Attorney General [now Secretary of Homeland Security], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. § 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application of adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary

circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

In the present matter, the AAO finds that the applicant has been convicted of a violent or dangerous crime. *See U.S. v. Becerril-Lopez*, 528 F.3d 1133 (9<sup>th</sup> Cir. 2008)(holding that a conviction for Robbery under California Penal Code § 211 constitutes a conviction for a crime of violence.) Therefore, the AAO finds he is subject to the regulation at 8 C.F.R. § 212.7(d).

In that he is subject to the requirements of 8 C.F.R. § 212.2(7)(d), the applicant must show that “extraordinary circumstances” warrant approval of the waiver. Extraordinary circumstances may exist in cases involving national security or foreign policy considerations, or if the denial of the applicant’s admission would result in exceptional and extremely unusual hardship. As the AAO finds no evidence of foreign policy, national security or other extraordinary equities, it will consider whether the applicant has “clearly demonstrate[d] that the denial of . . . admission as an immigrant would result in exceptional and extremely unusual hardship” to a qualifying relative.

The concept of exceptional or unusual hardship is addressed by the Board of Immigration Appeals (BIA) in *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001), in which the BIA found that many of the factors that are considered in assessing “extreme hardship” should be considered in evaluating “exceptional and extremely unusual hardship.” The BIA held, however, that the hardship suffered by the qualifying relative(s) must be “substantially beyond that which would ordinarily be expected to result from the alien’s deportation,” but need not be “unconscionable.” *Id.* At 59-63.

In determining whether the record establishes that any of the applicant’s qualifying relatives, his spouse and four U.S. citizen children, would suffer exceptional and extremely unusual hardship as a result of his inadmissibility, the AAO will, therefore, first consider whether the record before it satisfies the lower standard of extreme hardship.

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined 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 provides a list of factors relevant in determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, 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.

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.

*Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

The AAO notes that the Ninth Circuit Court of Appeals, under whose jurisdiction this case arises, found in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998) that “the most important single hardship factor may be the separation of the alien from family living in the United States”, and that, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” (Citations omitted.) Accordingly, the AAO will accord appropriate weight to the issue of family separation.

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she accompanies the applicant or remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

On appeal counsel asserts that it would constitute extreme hardship for the applicant’s spouse if she were to relocate to Guatemala because she is from El Salvador, and that she would be unable to find employment in order to support her children because her experience working at U.S. farms, factories and service industries would not transfer to Guatemala. The record, however, does not support counsel’s claims.

The evaluation of the applicant’s spouse prepared by [REDACTED] indicates that the applicant’s spouse reported that she has been employed as a cashier, a file clerk, a receptionist and for the past 16 years, a secretary assistant at a law office. Accordingly, her employment experience does not appear to be in those fields that counsel claims would make her unemployable in Guatemala. Further, while the AAO acknowledges the country conditions materials on Guatemala and Central America in the record, it does not find them to establish that the applicant’s spouse would experience extreme hardship if she relocated to Guatemala. The reports from the World Bank and the International Monetary Fund address poverty and economic development in Guatemala on a national scale and the section on Guatemala from the Department of State’s Country Reports on Human Rights Practices - 2005 outlines the state of human rights across Guatemala. The media articles report on gang and youth violence in Central America. None, however, offer evidence to demonstrate that the applicant’s spouse’s Salvadoran nationality would prevent her from adjusting to life in Guatemala, that she would be unable to obtain employment should she relocate there or that conditions in Guatemala would pose a threat to her safety. Accordingly, the record does not establish that the applicant’s spouse would experience extreme hardship upon relocation.

Counsel contends that the applicant’s spouse would also suffer extreme hardship if the applicant’s waiver application were to be denied and she remained in the United States. Counsel notes that the applicant’s spouse has been diagnosed with adjustment disorder, characterized by moderately severe levels of anxiety and depression, and that, if the applicant were removed, her situation would be exacerbated and result in Major Depressive Disorder. Counsel references a psychological report by [REDACTED] in support of his claims.

██████████ narrates the anxieties reported to her by the applicant's spouse and indicates that the applicant's spouse has undergone a battery of psychological tests. She reports that the applicant's spouse is fearful that she will not be able to support herself and her children in the applicant's absence as she relies financially on the applicant who is the family's main provider. ██████████

██████████ also notes that the applicant's spouse informed her that her oldest daughter, who suffers from asthma, will get worse if she loses her father, and finds that the potential exacerbation of the child's health problems would have a very negative impact on the applicant's spouse. The applicant's spouse, ██████████ states, would also be affected by her fears for the applicant's well-being in Guatemala because that country's current political, economic and social problems would present a threat to him and place his life at risk. ██████████ also reports that the applicant's spouse is concerned that she may not be able to deal with her children's behavior problems in the applicant's absence as he is the only one who can manage their rebelliousness. Based on her interview with the applicant's spouse and the tests she administered, ██████████ concludes that the applicant's spouse meets the criteria for Adjustment Disorder with Mixed Anxiety and Depressed Mood and that being separated from the applicant would lead to Major Depressive Disorder, which could have life-long adverse consequences.

While the AAO notes ██████████ findings regarding potential stressors on the applicant's spouse emotional/mental status, it observes that certain of these findings are not supported by the record. Although ██████████ states that the applicant's oldest daughter suffers from asthma that would be exacerbated in his absence, the record does not include documentary evidence to establish that the applicant's oldest daughter suffers from asthma. The behavior problems of the applicant's children are also cited by ██████████ as a concern that would increase the applicant's spouse stress and worry. However, the record fails to document these behavior problems or that such problems cannot be managed by the applicant's spouse. Neither does the record support ██████████ conclusion that the applicant's spouse's well-being would be affected by her fears for the applicant since the political, economic and social conditions in Guatemala would pose a threat to his safety. Absent supporting documentation, ██████████ conclusion that, in the absence of the applicant, such factors would result in the development of a full major depressive disorder for his spouse is speculative.

In her statements, the applicant's spouse contends that she would find it difficult to support herself and the applicant's children in his absence. She indicates that her rent is approximately \$2,000 per month and that utilities, clothing, medical costs and miscellaneous expenses total more than \$1,500 each month. The applicant's spouse asserts that it takes her and the applicant's salaries to make ends meet. While the AAO notes that the record does not provide documentary evidence, e.g., rent receipts and billings statements, in support of the applicant's spouse's claim, it does indicate that the applicant's spouse earns approximately \$23,000 annually, only slightly above the federal poverty guideline of \$22,050 for a family of four.<sup>1</sup>

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<sup>1</sup> Tax documentation in the record indicates that the applicant's 11-year-old son from a previous relationship lives with him and his spouse. However, the AAO notes that in describing her parental responsibilities in the applicant's absence, his spouse indicates that she would be responsible for her three children alone.

Counsel asserts that, based on the economic and societal situation in Guatemala, the applicant's deportation would be exceptionally life-altering, and therefore the applicant's spouse's anxieties about the applicant's removal are above those normally experienced by the relatives of excluded aliens. Counsel specifically notes that 56 percent of Guatemalans live below the poverty line and that the minimum wage in Guatemala does not cover the average food budget for a family of four. However, as previously indicated, the country conditions materials in the record address national norms rather than the situation of the applicant upon return to Guatemala. They do not demonstrate that the applicant would be limited to minimum wage employment in Guatemala or that he would be among those living in poverty. Accordingly, the AAO does not find the record to establish that the applicant would be unable to obtain employment in Guatemala and thereby provide some financial assistance to his spouse and family in the United States.

The AAO finds the evidence of record to establish that the applicant's spouse is suffering from clinically-significant levels of depression and anxiety as a result of her concerns over the applicant's potential removal, and that her financial situation would be tenuous in his absence. When combined with the normal hardships created by removal for a single parent, these factors are sufficient to establish that the applicant's spouse would experience extreme hardship if he were to be removed from the United States and she remained. However, as the applicant has not also established that his spouse would experience extreme hardship upon relocation to Guatemala, the record does not support a finding that the applicant's spouse would face extreme hardship if he is refused admission.

Counsel also asserts that the applicant's children would suffer extreme hardship based on the applicant's inadmissibility. To establish hardship to them upon relocation, counsel asserts that the high unemployment, poverty rate and health conditions in Guatemala would place them at serious risk and cites to the country conditions materials submitted as evidence. Counsel also contends that having to adjust to a new culture, new language and new environment after having spent their entire lives in the United States would result in extreme hardship to the applicant's children.

The AAO notes that Board of Immigration Appeals (BIA) has previously found that a 15-year-old child who had lived her entire life in the United States, was completely integrated into the American lifestyle and was not fluent in Chinese would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The BIA concluded that uprooting the child at her stage of education and social development and requiring her to survive in a Chinese-only environment would be such a significant disruption that it would constitute extreme hardship. The BIA, having found extreme hardship to be established for the 15-year-old, determined it unnecessary to consider whether relocation to Taiwan would also constitute extreme hardship for her younger siblings.

In the present matter, the birth certificates in the record establish that the applicant has two 11-year-old children who, like the children in *Matter of Kao and Lin*, have lived their entire lives in the United States and would have to adapt to a new culture and new language if they relocated to Guatemala. Relying on the BIA's reasoning in *Matter of Kao and Lin*, the AAO concludes that relocation to El Salvador would create a similar disruption in the life of the applicant's 11-year-old

son and daughter. Therefore, the AAO finds that the applicant has established that relocation would result in extreme hardship to his oldest children.

The applicant has not, however, demonstrated that any of his children would experience extreme hardship if he were to be removed and they continued to reside in the United States. Although the applicant's spouse states that her oldest daughter suffers from asthma that could worsen as a result of the applicant's absence, the record, as previously discussed, does not include documentary evidence of her asthma or of any health problems on the part of the applicant's children. [REDACTED]

[REDACTED] in her evaluation, notes that the applicant's children have behavior problems and that losing their father and not having their mother available as much would result in tremendous hardship for them. However, the AAO notes that [REDACTED] has not evaluated the applicant's children and the record does not otherwise document the behavior problems of the applicant's children or the impact of their father's absence on them. The record does not, therefore, establish that the applicant's children would experience extreme hardship in both Guatemala and the United States. Accordingly, the applicant has not established that his children would suffer extreme hardship if his waiver application were to be denied.

In the present case, the record fails to establish that the applicant's spouse or children would experience extreme hardship as a result of his inadmissibility. As the record does not establish that a qualifying relative would suffer extreme hardship as a result of a denial of the applicant's waiver application, the AAO finds that it also fails to demonstrate that a qualifying relative would suffer the heightened standard of exceptional and extremely unusual hardship imposed by the regulation at 8 C.F.R. § 212.7(d). As the record does not establish that a qualifying relative would experience exceptional and extremely unusual hardship if the applicant's waiver application is denied, the AAO finds that the applicant has failed to demonstrate that he merits a favorable exercise of discretion under section 212(h)(2) of the Act.

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. 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.