

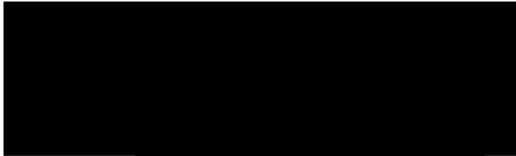
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U.S. Department of Homeland Security  
U.S. Immigration and Citizenship Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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FILE: [Redacted] Office: LOS ANGELES, CA Date: **MAR 22 2010**

IN RE: Applicant: [Redacted]

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:  
[Redacted]

**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, [REDACTED], is a native and citizen of El Salvador 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 committing a crime involving moral turpitude. [REDACTED] has three U.S. citizen daughters, and a U.S. citizen spouse. [REDACTED] sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so as to immigrate to the United States. The director concluded that [REDACTED] failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director, dated July 5, 2006.* The applicant submitted a timely appeal.

On appeal, counsel states that [REDACTED] and his U.S. citizen wife and daughters have a close relationship and would be devastated if the waiver were denied. Counsel states that [REDACTED] brings in the majority of his family's income. She states that the applicant's spouse, [REDACTED], would have the hardships of a single parent if the waiver were denied, and [REDACTED] daughters would feel abandoned and their grades, self-esteem, and confidence would be affected. Counsel states that [REDACTED] has lived in the United States since he was 14 years old and all of his brothers and sisters live in the United States, and his mother lives one house away from him. She states that he has no close family members in El Salvador. Counsel states that El Salvador is impoverished, with high unemployment and low wage jobs, and has little to offer in education, healthcare, and housing. She states that [REDACTED] will live in poverty there and his wife will experience extreme financial hardship having to support him while supporting her household in the United States. If [REDACTED] joined her husband in El Salvador, counsel states that the whole family would live in squalor and poverty. Counsel states that the charge of receiving known stolen property that is on [REDACTED] criminal record is wrong as he has never bought or received stolen property, and has never been jailed for this charge. She indicates that he is in the process of removing the charge from his record.

The AAO will first consider the finding of inadmissibility. Section 212(a)(2) of the Act states:

(A)(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 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines "conviction" for immigration purposes as:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

The rap sheet shows that in 1995 [REDACTED] was convicted of "Inflicting Corporal Injury on a Spouse" in violation of California Penal Code § 273.5(a). The judge found that he was guilty of the charge, and suspending imposition of his sentence, ordered that he perform 42 days with CalTrans or serve 60 days in jail, attend counseling, and be placed on probation. In *Grageda v. INS*, 12 F.3d 919 (9th Cir. 1993), the Ninth Circuit Court of Appeals held that spousal abuse under section 273.5(a) is a crime of moral turpitude because spousal abuse is an act of baseness or depravity contrary to accepted moral standards, and willfulness is one of its elements. In that the applicant's crime involves moral turpitude, he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

[REDACTED] has other convictions. The Disposition of Arrest and Court Action shows that on October 17, 1995, [REDACTED] was convicted of violation of a court order to prevent domestic violence in violation of California Penal Code § 273.6(a). The judge suspended imposition of his sentence and ordered that he be placed on probation for 24 months and serve 30 days in jail. Counsel admits on appeal that in 1998 [REDACTED] was convicted of domestic violence. The rap sheet shows that he was convicted of "Battery on Spouse/Cohab/Fiancee" in violation of California Penal Code § 243(e) in 1998.

Since [REDACTED] conviction of "Inflicting Corporal Injury on a Spouse," involves moral turpitude, the AAO need not consider whether his other convictions involve moral turpitude. It is noted that counsel contends that [REDACTED] was not arrested or convicted of receiving stolen property in October 1995.

A waiver is available for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. 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 -

. . .

- (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 . . .

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relatives here are the applicant's U.S. citizen spouse and

children.<sup>1</sup> If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996).

Because the applicant's crime "Inflicting Corporal Injury on a Spouse" qualifies as violent crime, the applicant must prove "exceptional and extremely unusual hardship" to a qualifying relative, so the AAO will evaluate whether the evidence meets this standard. 8 C.F.R. § 212.7(d). In order to show "exceptional and extremely unusual hardship," the applicant must show more than "extreme hardship." *See Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001) (holding in cancellation of removal case that the "standard requires a showing of hardship beyond that which has historically been required in suspension of deportation cases involving the 'extreme hardship' standard"). The hardship "must be substantially beyond the ordinary hardship that would be expected when a close family member leaves this country," and is "limited to truly exceptional situations." *Id.* (internal quotation marks omitted). However, the applicant need not show that hardship would be unconscionable. *Id.* at 60.

The record contains letters, income tax documents, a psychological evaluation, birth certificates, criminal records, photographs, school records, and other documentation. In rendering this decision, the AAO will consider all of the evidence in the record.

conveys that her husband earns the majority of the family's income and that she would experience hardship supporting herself and her daughters without him. The June 1, 2006 letter by Copy Page indicates that has been with the company since September 29, 2004, earning \$36,000 a year as a night shift supervisor. Wage statements for 2006 show that earns \$12.00 per hour; she seems to work full-time with bi-weekly income of \$960. Although the record shows that the applicant earned \$36,000 a year as a night shift supervisor while his wife earned \$12.00 per hour working full time, the record contains no documentation of the family's household expenses, such as its utility bills, insurance, or rent. Evidence of expenses is needed to show that is, in fact, unable to financially support herself and her daughters.

In the psychological evaluation, makes the following statements. has three sisters living in Tijuana and her parents, eight siblings, and numerous relatives live in the United States. Two of daughters are in a Gifted and Talented Education (GATE) school program. is in the moderate range of depression and the severe range of anxiety. has adjustment disorder with mixed anxiety and depressed mood and has adjustment disorder with anxiety. Reports from the Consular Information Sheet state that El Salvador has serious crime and gang problems, which makes fear for her husband's life if he returned there. depression and anxiety about her husband's return to El Salvador will impact her daughters. According to the psychological evaluation, oldest daughter, who was born on June 17, 1995, speaks fair Spanish. Her second daughter, who was born on December 29, 1996, is limited in her ability to speak Spanish. Her youngest daughter is

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<sup>1</sup> The Form I-601 conveys that mother is a lawful permanent resident of the United States; however, there is no documentation in the record substantiating the status of his mother and there is no claim of extreme hardship made in connection with his mother.

approximately seven years old. Regarding family ties to the United States, the psychological evaluation conveys that [REDACTED] parents, eight siblings, and numerous relatives live in the United States, while only three of her sisters live in Tijuana. The applicant's two oldest daughters are in a Gifted and Talented Education (GATE) school program. The psychological evaluation conveys that the applicant's wife is in the moderate range of depression and the severe range of anxiety; and his daughter, [REDACTED] has adjustment disorder with mixed anxiety and depressed mood, and his daughter [REDACTED] has adjustment disorder with anxiety. Reports from the Consular Information Sheet describe El Salvador as having serious crime and gang problems, which problems make [REDACTED] fear for her husband's safety if he returned there. The psychological report conveys that [REDACTED] depression and anxiety about her husband's return to El Salvador will affect her daughters.

[REDACTED] conveys that she will fear for his safety and live with constant worry. [REDACTED] states that a U.S. Consular Information Sheet for El Salvador conveys that:

The criminal threat in El Salvador is critical. Random and organized violent crime is epidemic through El Salvador. Armed holdups of vehicles traveling on El Salvador's roads appear to be increasing. El Salvador has one of the highest homicide rates in the world. Criminals often become violent quickly, especially when victims fail to cooperate immediately in surrendering valuables. Frequently, victims who argue with assailants or refuse to give up their valuables are shot.

The AAO notes that El Salvador was designated for Temporary Protected Status (TPS) in March 2001 due to the devastation caused by a series of severe earthquakes that occurred in January and February of 2001.<sup>2</sup> The TPS designation for El Salvador has been extended through September 9, 2010 because: "there continues to be a substantial, but temporary, disruption of living conditions in El Salvador resulting from the series of earthquakes that struck the country in 2001 . . . ."<sup>3</sup>

With regard to remaining in the United States without the applicant, [REDACTED] asserts that she will be unable to financially support herself and her three daughters. According to the psychological evaluation, [REDACTED] oldest daughter, who was born on June 17, 1995, speaks fair Spanish. Her second daughter, who was born on December 29, 1996, is limited in her ability to speak Spanish. Her youngest daughter is approximately seven years old. Although the record shows that the applicant earned \$36,000 a year as a night shift supervisor while his wife earned \$12.00 per hour working full time, the record contains no documentation of the family's household expenses, such as its utility bills, insurance, or rent. Evidence of expenses is needed to show that [REDACTED] is, in fact, unable to financially support herself and her daughters. Regarding family ties to the United States, the psychological evaluation conveys that [REDACTED] parents, eight siblings, and numerous relatives live in the United States, while only three of her sisters live in Tijuana. The applicant's two oldest daughters are in a Gifted and Talented Education (GATE) school program. The psychological evaluation conveys that the applicant's wife is in the moderate range of depression and the severe

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<sup>2</sup> Federal Register: October 1, 2008 (Volume 73, Number 191).

<sup>3</sup> *Id.*

range of anxiety; and his daughter, [REDACTED] has adjustment disorder with mixed anxiety and depressed mood, and his daughter [REDACTED] has adjustment disorder with anxiety. Reports from the Consular Information Sheet describe El Salvador as having serious crime and gang problems, which problems make [REDACTED] fear for her husband's safety if he returned there. The psychological report conveys that [REDACTED] depression and anxiety about her husband's return to El Salvador will affect her daughters.

Here, the record demonstrates that family separation will be difficult for the applicant's spouse and children, especially because [REDACTED] is concerned about her husband's return to a country designated for TPS. Furthermore, the AAO gives considerable weight to the hardship that flows from the separation of parent and child. *See Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998). We acknowledge that the applicant's family will experience some financial hardship if they remain in the United States without him because they will no longer have his income. However, as previously stated, the record contains no evidence of the applicant's family's household expenses, which documentation is needed to prove the level of financial hardship. When all of the alleged hardship factors are considered in the aggregate, the AAO finds that the hardship endured by the applicant's wife and daughters as a result of separation from the applicant does not meet the "exceptional and extremely unusual hardship" standard set forth in 8 C.F.R. § 212.7(d).

With regard to joining the applicant to live in El Salvador, [REDACTED] indicates in her psychological evaluation that she is not from El Salvador, and cannot take her children to live where they will experience poverty, crime, and danger, and not receive a good education. [REDACTED] daughters are now 14, 13, and 7 years old. Her second oldest daughter's ability to speak or write Spanish is characterized as poor, and the ability of her youngest daughter is unknown. That El Salvador has been designated TPS status indicates that relocation to El Salvador will result in a lower standard of living and adverse country conditions. [REDACTED] and her daughter's will be separated from their family ties of [REDACTED] parents, eight of her siblings, and in-laws. However, even when considering the alleged hardship factors cumulatively, the diminished standard of living, the crime, the difficulty in living in a country where the language is foreign, and the separation from family members in the United States, the AAO finds that the applicant has not met his burden of proving that his wife and children would suffer exceptional and extremely unusual hardship if they were to join him to live in El Salvador. The applicant has not demonstrated that the evidence in the record in the aggregate shows that the hardships of relocation produce a "truly exceptional situation" that would meet the exceptional and extremely unusual hardship standard. *See Matter of Monreal-Aguinaga*, 23 I&N Dec. 56 at 62. Accordingly, the hardships to the applicant's wife and children that arise from relocation do not meet the heightened hardship standard set forth in 8 C.F.R. § 212.7(d).

Accordingly, the applicant failed to demonstrate that he merits a favorable exercise of discretion under 8 C.F.R. § 212.7(d), and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.