

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

H2

FILE:

[REDACTED]

Office: CHICAGO, IL

Date:

DEC 16 2005

IN RE:

[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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Colombia 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 naturalized United States citizen and 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) accordingly. *Decision of the District Director*, dated August 19, 2002.

On appeal, counsel states that denial will result in extreme hardship to the applicant's family. *Form I-290B*, dated September 23, 2002. In support of these assertions, counsel submits a brief, dated September 23, 2002; affidavits of the applicant's spouse, the applicant, and the applicant's daughter, dated September 16, 2002; a copy of the marriage certificate of the applicant and his spouse; copies of the United States birth certificates of two of the applicant's children; a copy of the naturalization certificate of the applicant's spouse; a copy of the legal permanent resident card issued to the applicant's daughter; a country condition report for Colombia; copies of tax and financial documents for the applicant and his spouse; verification of employment for the applicant and his spouse and letters of support. The entire record was reviewed and considered in rendering a decision on the applicant's appeal.

The record reflects that on October 25, 1994, the applicant was convicted of burglary.

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-
 - (I) 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)(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 section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) of the Act. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in 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.

Counsel asserts that the applicant's spouse and children would suffer hardship as a result of relocation to Colombia in order to remain with the applicant. Counsel states that the applicant's spouse and children have no ties to Colombia and have never lived there. *Brief in Support of Appeal for Denial for Waiver on Grounds of Inadmissibility*, dated September 23, 2002. Counsel states that two of the applicant's children were born in the United States and that the applicant's spouse and stepdaughter have resided in the United States for many years. *Id.* at 2. Counsel contends that United States citizens and other foreign nationals are the victims of threats, kidnappings, hijackings and murder in Colombia and submits a U.S. Department of State travel warning to support her assertion. *Id.*

The record fails to establish that the applicant's spouse and children would suffer extreme hardship if they remain in the United States in order to maintain residence in a safe country. Counsel contends that the applicant's spouse would suffer financial hardship as a result of separation from the applicant. *Id.* Counsel indicates that the applicant's spouse would be unable to pay the mortgage and support herself and her children on her income alone. *Id.* The record demonstrates that the applicant's spouse is employed as a waitress at Garcia's Restaurant where she has worked since 1998. *Letter from Luis Garcia*, dated July 28, 2002. Counsel submits an affidavit of the applicant stating that his spouse watches the children while he works during the week and that he watches the children on the weekends while his spouse works. *Affidavit of Juan Alberto Aristizabal*, dated September 16, 2002. Although the applicant's spouse and children may not be able to maintain residence in their current home in the absence of the applicant, the record fails to establish that the applicant's spouse is dependent on the income earned by the applicant to subsist. Moreover, the record fails to establish that the applicant's spouse is unable to work during the week in order to earn additional money or that the applicant will be unable to contribute financially to his family's maintenance from a location outside of the United States. The AAO notes that the eldest daughter of the applicant states that she plans to continue living with her family while working toward obtaining a nursing degree. *Affidavit of Nancy Saldana*, dated September 16, 2002. The record fails to establish that the applicant's adult daughter is unable to provide for herself financially while continuing her education.

The AAO acknowledges the assertion of the applicant's spouse that her children have a close relationship with the applicant and would suffer greatly as a result of separation from their father. *Affidavit of Sandra Aguilar*, dated September 16, 2002. 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. The AAO recognizes that the applicant's spouse and children would likely 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 deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and/or children 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.