

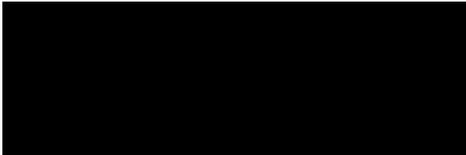
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FILE:



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Date: SEP 02 2005

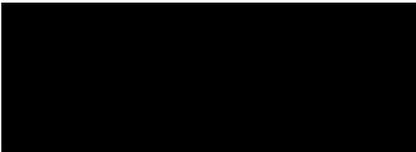
IN RE:



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.

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Colombia 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 crimes involving moral turpitude (forgery and multiple theft convictions). The record indicates that the applicant has a U.S. citizen father and two U.S. citizen children. The applicant seeks a waiver of inadmissibility in order to reside with her family in the United States.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen father and children and the application was denied accordingly. *District Director's Decision*, dated April 27, 2004.

On appeal, counsel asserts that the applicant's children would suffer extreme hardship if the applicant returned to Colombia. *Form I-290B*, dated May 27, 2004.

Counsel has submitted the applicant's protection order and divorce decree. The record contains previously submitted documents including, but not limited to, an attorney letter, the 2004 U.S. Department of State consular information sheet and travel warning for Colombia, letters from the applicant's children's school and a medical note for the applicant's father. The entire record was reviewed and considered in arriving at a decision on the appeal.

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:

(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. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. 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.

An analysis will be undertaken for the applicant's father and children. The applicant's father has a lawful permanent resident daughter and three grandchildren in the United States, at least two of whom are U.S. citizens. The record does not include information regarding any family ties outside of the United States. The record includes the 2004 U.S. Department of State consular information sheet and a 2004 U.S. Department of State travel warning for Colombia that detail widespread violence, crime and kidnapping. The record does not include information regarding any ties of the applicant's father to Colombia, however, the applicant's father is a former Colombian national and presumably has lived in Colombia. See *Victor Castro's Certificate of Naturalization*, dated February 24, 1999. The record does not include information regarding the financial impact of departure on the applicant's father. The record includes a doctor's note which indicates that the applicant's father has hypertension and hypercholesterolemia, but it's controlled on medication and he is currently asymptomatic. See *Doctor's Note*, dated March 5, 2004. There is no mention of the unavailability of suitable medical care in Colombia. The record does not reflect that the applicant's father would suffer extreme hardship in the event of relocation to Colombia or in the event that he remains in the United States without the applicant.

The applicant's children, ages nine and fourteen, have a U.S. citizen grandfather, lawful permanent resident aunt and a cousin, whose status is not mentioned in the record, who reside in the United States. The record does not include information regarding any family ties outside of the United States. The record includes the 2004 U.S. Department of State consular information sheet and a 2004 U.S. Department of State travel warning for Colombia that detail widespread violence, crime and kidnapping. The record does not include information regarding any ties of the applicant's children to Colombia, however, the record indicates that they have lived their entire life in the United States. The BIA found that a fifteen-year-old child who 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 record is not clear as to whether the applicant's children are fluent in Spanish, however, the AAO finds *Matter of Kao and Lin* to be persuasive in this case as they have lived their entire life in the United States. The record does not include information regarding the financial impact of departure on the applicant's children. The record includes documentation verifying that the applicant has sole custody of the children and that the applicant's ex-husband was physically abusive towards her, to the point that she and the children were granted an emergency protection order. The AAO finds that the children would suffer extreme hardship in the event that they relocate to Colombia due to the extremely unsafe environment in which they would be

placed and there is no indication that they have ever resided in Colombia or have ties to Colombia. In the event that the children remain in the United States without the applicant, the applicant's custody rights would become an issue. *Letter from Attorney*, at 2, dated April 12, 2004. The father of the applicant's children has a history of physical abuse and the applicant's children would likely suffer extreme hardship if placed in his care.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The main adverse factors in the present case are the applicant's numerous convictions for forgery and theft. The record does not indicate that these crimes were serious in nature as the applicant served only 20 days in jail for the offenses. Furthermore, the applicant entered the United States without inspection in 1997, although she was eligible to file an adjustment of status application under section 245(i) of the Act.

The favorable factors include the presence of the U.S. citizen father and children, the presence of a lawful permanent resident sister, the lack of criminal activity in over eight years as evidence of rehabilitation, extreme hardship to the applicant's children and evidence of gainful employment.

The AAO finds that the crimes committed by the applicant cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.