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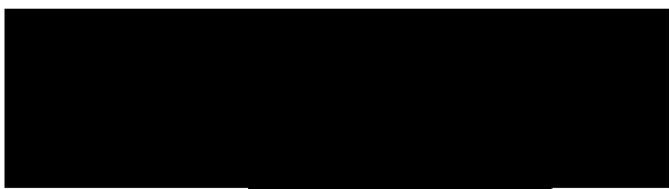
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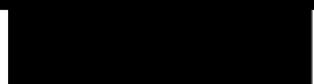
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

JUL 17 2007

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The AAO notes that on appeal, the applicant, through counsel, requested 30-days to submit a brief and/or evidence to the AAO. *Form I-290B*, filed June 20, 2006. The record contains no evidence that a brief or additional evidence was filed within 30-days. On June 29, 2007, the AAO sent counsel a facsimile requesting evidence of the brief and/or additional evidence, or a statement by counsel that neither a brief nor evidence was filed; however, the AAO received no reply from counsel. Therefore, the record must be considered complete.

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), as an alien convicted of a crime involving moral turpitude. The record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his United States citizen spouse and lawful permanent resident father.

The Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relatives and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Director's Decision*, dated June 22, 2006.

On appeal, the applicant, through counsel, contends that the Director failed to address the applicant's father's situation. *Form I-290B*, filed July 20, 2006. Additionally, counsel asserts that "the issue of extreme hardship that the spouse would suffer was NOT taken into account in its totality." *Id.*

The record includes, but is not limited to, two statements from the applicant's wife, a statement from the applicant's father, and court dispositions for the applicant's arrest and conviction. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on September 6, 2001, the applicant was convicted of conspiracy to pass and possess counterfeit obligations of the United States with intent to defraud, and was sentenced to three (3) years probation.

Section 212(a) of the Act provides, in pertinent part, that:

(A) *Conviction of certain crimes.—*

- (i) In general.—Except as provided in clause (ii), any 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...

Section 212(h) of the Act provides, in pertinent part, that:

(h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in his discretion, waive the application of subparagraphs (A)(i)(I)...of subsection (a)(2) if—

(1) (A) in the case of any immigrant it is established to the satisfaction of the [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 established to the satisfaction of the [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...

(2) the [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien’s applying or reapplying for a visa, for admission to the United States, or adjustment of status.

In the present application, the record indicates that on March 28, 1999, the applicant entered the United States on a B1/B2 nonimmigrant visa, with authorization to remain in the United States until September 27, 1999. On March 29, 2001, the applicant was arrested by the Miami-Dade Police Department for possessing certain forged bills. On September 6, 2001, a United States District Court judge, for the Southern District of Florida, convicted the applicant of conspiracy to pass and possess counterfeit obligations of the United States with intent to defraud, and sentenced the applicant to three (3) years probation. On March 11, 2003, the applicant married [REDACTED] a United States citizen. On May 14, 2003, the applicant’s wife filed a Form I-130 on behalf of the applicant. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) at the same time. On June 25, 2004, the Form I-130 was approved. On August 2,

2004, the applicant filed a Form I-601. On June 22, 2006, the Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relatives.

The applicant is seeking a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act. A waiver under section 212(h) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent or child of the applicant. Hardship the alien himself experiences upon removal is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen spouse and lawful permanent resident father. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (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 to a qualifying relative. The 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 if the applicant is removed from the United States, it would cause extreme hardship to the applicant's United States citizen spouse and lawful permanent resident father. *Form I-290B, supra*. The applicant's wife states she could not join the applicant in Colombia because it is "too dangerous, the economy is in complete shambles and there is no future there." *Statement by [REDACTED]*, filed August 2, 2004. Counsel states "the applicant and his wife will be returning to Colombia, a country that has been in the midst of severe social unrest and turmoil and where life is extremely dangerous and thousands of people lose their lives and liberty in the civil war that has been raging there for many years." *Form I-290B, supra*. The AAO notes that the applicant's wife's family lives in Colombia and she has no family in the United States. *See Statement by [REDACTED], supra*. The applicant's wife states that without her husband's financial support she cannot continue to attend college. *Id.* It has not been established that the applicant's wife could not continue her studies in Colombia. The applicant's father wants the applicant to receive "his green card," so that he can "start his studies in a college." *Statement by [REDACTED]*, filed August 2, 2004. As stated above, hardship the alien himself experiences upon removal is irrelevant to section 212(h) waiver proceedings. The AAO notes that the applicant's father made no claim that he would suffer any hardship if he joined the applicant in Colombia. The applicant's father is a native of Colombia, who speaks Spanish, and the applicant failed to demonstrate whether or not they have any family ties in Colombia. The AAO finds that the applicant failed to establish that his wife and father would suffer extreme hardship if they accompanied the applicant to Colombia.

In addition, counsel fails to establish extreme hardship to the applicant's spouse and father if they remain in the United States. The applicant's wife states that she and the applicant reside with the applicant's family and if the applicant is removed from the United States, she has no one to live with, and no way to continue her

studies. *Statement by* [REDACTED] *supra*. The AAO notes that it has not been established that the applicant's wife could not continue to reside with her in-laws. Additionally, it has not been established that the applicant's wife is not eligible for financial aid or some other form of financial assistance to help with her college expenses. The applicant's father states that if the applicant is removed it "would be devastating and specially [sic] because [the applicant] is [his] main support." *Statement by* [REDACTED], *supra*. The AAO notes that no documentation was submitted establishing that the applicant supports his father. As a United States citizen and lawful permanent resident, the applicant's spouse and father are not required to reside outside of the United States as a result of denial of the applicant's waiver request. Additionally, beyond generalized assertions regarding country conditions in Colombia, the record fails to demonstrate that the applicant will be unable to contribute to his family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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 father will endure hardship as a result of separation from the applicant. However, their situation is typical to individuals separated as a result of removal 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 father 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(a)(2)(A) 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.