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U.S. Citizenship and Immigration Services

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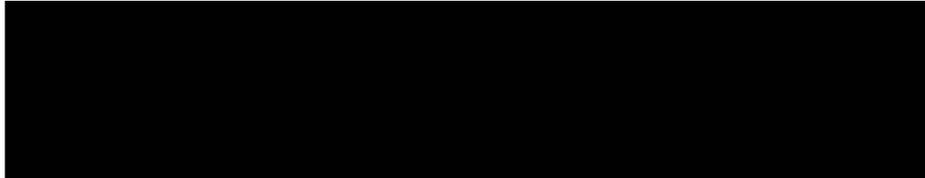


FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 03 2008

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:



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 Director of the California Service Center denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be dismissed.

The applicant is a native and citizen of Columbia who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i), for having committed a crime involving moral turpitude. The applicant's parents are lawful permanent residents of the United States. The applicant sought a waiver of inadmissibility under section 212(h) of the Act, which the Director denied, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the Director*, dated March 4, 2006.

The AAO will first address the finding of inadmissibility.

Section 212(a)(2) of the Act states in pertinent part, that:

(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.

“[M]oral turpitude refers generally to conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general.” *Padilla v. Gonzales*, 397 F.3d 1016, 1019-21 (7th Cir. 2005), (quoting *In re Ajami*, 22 I. & N. Dec. 949, 950 (BIA 1999)).

The record reflects that the applicant was found guilty of burglary unoccupied dwelling, grand theft third degree, and criminal mischief \$200 or less in 2001 under Florida law. *Finding of Guilt and Order Withholding Adjudication and Special Conditions*, dated February 2, 2001. The adjudication of guilt was withheld and the applicant was placed on probation for three years. *Order of Probation*, dated February 2, 2001.

The applicant's convictions for burglary unoccupied dwelling and grand theft third degree are crimes of moral turpitude. See, *Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982) (burglary with intent to commit theft is a crime of moral turpitude) and *Hashish v. Gonzales*, 442 F.3d 572 (7th Cir. 2006) (knowingly obtaining or exerting unauthorized control over property of the owner are crimes of moral turpitude).

The applicant's adjudication of guilt was withheld and he was placed on probation. It is noted that withholding of adjudication under Florida law is a conviction for immigration purposes under *Matter of Ozkok*, 19 I&N Dec. 546 (BIA 1988).

Based on the evidence in the record, the AAO finds the applicant inadmissible for having been convicted of a crime of moral turpitude under section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i).

The AAO will now address the finding that a waiver of inadmissibility is not warranted.

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. In this case, the applicant's lawful permanent resident parents are the qualify relatives. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the qualifying relative must be established in the event that the qualifying relative joins the applicant; and in the alternative, that he or she remains in the

United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record contains letters, student records, criminal court records, U.S. Department of State country reports about Columbia, income tax records, and other documents.

The letter dated March 22, 2006 by [REDACTED] M.D., orthopaedic surgeon, conveys that the applicant's father has been under his care since January 2005 due to a fracture to the left open tibia fracture and the right ankle. He states that the leg injury required several operations and that extensive rehabilitation was required after the surgeries. [REDACTED] indicates that the injuries are stabilized and healed and the applicant's father has had outpatient physical therapy. He states that at the present time the applicant's father may resume work with the limitation of standing less than 10 minutes per hour.

The March 22, 2006 letter by [REDACTED], pastor, states that the applicant has been active with his church since 1994.

A March 27, 2006 letter from a friend of the applicant's mother who works with the Miami-Dade Police Department conveys that deporting the applicant, who works full time and attends college, would be excessive.

The undated letter by the applicant states that soon after he turned 18 years old he and his friend took some belongings from an unoccupied house, which he states made a mistake in doing. He states that he attends community college, tutors his girlfriend, and helps his friends with their school work. He states that he has many emotional ties to the United States, the most important being his parents. He states that he has no immediate family in any other country.

The undated letter by the applicant's mother states that the applicant is their only son and they are a close family. She states that family is very important to her and she could not have a happy life in the United States without her son. She states that her son's primary language is English and that he spent more time in the United States than in Columbia.

The June 15, 2003 by BP Oil Company states that the applicant's father has been employed full-time since June 2002 and is currently a customer service representative.

Counsel's memorandum in support of granting the waiver states that the applicant has no immediate family members in Columbia, which is an extremely dangerous country. She states that the applicant has no economic means of support in Columbia, his parents being his sole economic support in the United States. Counsel states that the applicant has no siblings in Columbia to help in transitioning to a country barely remembered by the applicant. She states that the applicant has no family, assets, or place to live in Columbia, and that his emotional and financial support are his parents.

The applicant fails to establish that his father or mother would experience extreme hardship if they remained in the United States without him.

Courts in the United States have stated that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[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.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted).

However, in *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families. In *Banks v. INS*, 594 F.2d 760, 763 (9th Cir. 1979) the court found that separation of a mother from a grown son who elects to live in another country is not extreme hardship. In *Dill v. INS*, 773 F.2d 25 (3rd Cir. 1985), the Third Circuit affirmed the BIA’s finding no extreme hardship to the petitioner or to the couple that raised her on account of separation, as the petitioner “is an adult who can establish her own life and need not depend primarily on her parents for emotional support in the same way as a young child.” And in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court held that extreme hardship is “unusual or beyond that which would normally be expected” upon deportation and “common results of deportation or exclusion are insufficient to prove extreme hardship.”

The record reflects that the applicant’s mother is very concerned about separation from her only son. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant’s parents, if they remain in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which certainly will be experienced by the applicant’s parents, is unusual or beyond that which is normally to be expected upon removal. See *Sullivan*, *Banks*, *Dill*, and *Perez*, *supra*.

The applicant establishes that his father would experience extreme hardship if he joined the applicant to live in Columbia.

The record conveys that the applicant’s father, who was employed as a customer service representative in 2003, sustained a serious injury to his leg and ankle in 2005. It conveys that the leg injury required several operations, extensive rehabilitation, and outpatient physical therapy. Although the injuries are stabilized and healed, the applicant’s father is limited to standing less than 10 minutes per hour. The AAO finds that the physical limitation of the applicant’s father may severely diminish his ability to find employment in Columbia, a country in which the U.S. Department of State report for February 25, 2000 shows has a per capita gross domestic product of \$2,100 and has a high percentage of its population living in poverty. In light of this context, the applicant’s father would experience extreme hardship if he were to join his son to live in Columbia.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered

separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship in the event the applicant's father and mother remained in the United States without him. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 212(h) of the Act, 8 U.S.C. § 1182(h).

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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.