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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: CHICAGO, IL

Date:

APR 30 2008

IN RE:

PETITION: 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 PETITIONER:

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 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 U.S. citizen and the father of a U.S. citizen child. He now seeks a waiver of inadmissibility so that he may reside in the United States with his spouse and child.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated August 11, 2006.

On appeal, the applicant contends that Citizenship and Immigration Services (CIS) erred in finding that the applicant had failed to meet the burden of establishing extreme hardship to his qualifying relative as necessary for a waiver. *Form I-290B; Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a statement from the applicant's spouse; a statement from the applicant; medical records for the applicant's spouse; an Arthritis Foundation published report; a United States Department of State country conditions report; home loan and payoff statements for the applicant's spouse; car titles for the applicant and his spouse; a *World Factbook* country condition report; statements from family members and friends; employment letters for the applicant and his spouse; tax statements for the applicant and his spouse; criminal court records for the applicant; a letter from the applicant's probation officer; utility bills for the applicant; and telephone bills for the applicant. The entire record was considered in rendering a decision on the appeal.

The applicant has the following criminal history. On June 19, 2001 the applicant was convicted in New York of one count of the offense of Passing of Counterfeit Currency 18 U.S.C. § 472. *Judgment, United States District Court, Eastern District of New York*, dated June 19, 2001. The applicant was placed on supervised release for three years which he successfully completed. *Id.*; *Letter from [REDACTED] U.S. Probation Officer, United States District Courts, Northern District of Illinois, U.S. Probation*, dated July 9, 2004. As 18 U.S.C. § 472 has an intent element, the AAO finds that the applicant has been convicted of a crime involving moral turpitude. *See also Lozano-Giron v. INS*, 506 F.2d 1073 (7th Cir. 1974); *Matter of K*, 7 I&N Dec. 178 (BIA 1956). As such, the applicant is inadmissible under Section 212(a)(2)(A)(I).

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 -

(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 . . .

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.

Prior to addressing whether the applicant qualifies for a section 212(h) waiver, the AAO finds it necessary to address an error made by the District Director. In her decision denying the waiver of inadmissibility, the District Director found the applicant to be inadmissible for a crime involving moral turpitude and subsequently stated that the Immigration and Nationality Act authorized a waiver under section 212(a)(6)(C)(iii). *Decision of the District Director*, dated August 11, 2006. The District Director further stated that the provisions authorizing the waiver were found under section 212(i) of the Act and that this waiver may only be granted when the immigrant has a qualifying relationship and the refusal of admission would constitute an “extreme hardship” to the citizen or resident spouse or parent. *Id.* The District Director’s application of the law is incorrect. As the applicant is inadmissible for having been convicted of a crime involving moral turpitude under section 212(a)(2)(A)(I) of the Act, a waiver is authorized under section 212(h), not section 212(i) of the Act. Further, a qualifying relative under section 212(h) of the Act may be a United States citizen or lawful permanent resident spouse, parent or child of the applicant, a broader designation than that provided under section 212(i) of the Act, which defines a qualifying relative as the spouse or son or daughter of a United States citizen or lawful permanent resident.

In response to the District Director’s denial of the waiver application under section 212(i) of the Act, counsel asserts that the applicant’s spouse will suffer extreme hardship pursuant to section 212(i) of the Act. *Attorney’s brief*. The AAO notes that the applicant has a United States citizen child (*See United States birth certificate*) and that neither the District Director nor counsel, in response to the District Director’s decision, have addressed whether the applicant’s United States citizen child would qualify for a waiver under section 212(h) of the Act. The AAO’s analysis of the record will, however, consider the evidence presented establishes that the applicant’s child, as well as his spouse, would suffer extreme hardship were his waiver request to be denied.

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.

The AAO notes that extreme hardship to the applicant's spouse and/or child must be established in the event that they reside in Colombia or the United States, as they are not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse and daughter travel with the applicant to Colombia, the applicant needs to establish that they will suffer extreme hardship. The applicant's spouse was born in Colombia. *Form G-325A, Biographic Information sheet, for the applicant's spouse.* The applicant's spouse has no family members in Colombia. *Statement from the applicant's spouse, dated August 22, 2005.* The applicant's spouse has suffered from rheumatoid arthritis for many years. *Medical record, Health Network Chart Review Print, dated January 29, 2003.* Rheumatoid arthritis is a chronic disease that continues indefinitely and may not go away. *Disease Center, Arthritis Foundation, <http://www.arthritis.org/conditions/DiseaseCenter/RA/ra-overview.asp>.* According to the applicant's spouse, she has suffered from rheumatoid arthritis since she was 16 years old and has a lot of joint pain throughout her body. *Statement from the applicant's spouse, dated August 22, 2005.* She further notes that in Colombia, she would not be able to continue with the arthritis treatment she has received in the United States. *Id.* The AAO notes that the record does not include any information on the treatment the applicant's spouse is undergoing in the United States or provide evidence that such treatment would be unavailable in Colombia. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See Matter of Soffici, 22 I&N Dec. 158, 165 (Comm. 1998)(citing Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972)).* The applicant states there is no work and a lot of poverty in Colombia. *Statement from the applicant, dated August 24, 2005.* According to evidence in the record, Colombia's economy has been on a recovery trend during the past two years despite a serious armed conflict. *Colombia, The World Factbook, <https://www.cia.gov/cia/publications/factbook/geos/co.html>.* While high unemployment is an ongoing economic problem, the economy continues to improve thanks to austere government budgets, focused efforts to reduce public debt levels, an export-oriented growth strategy, and an improved security situation in the country. *Id.* The applicant has an employment history of working in maintenance and as a driver. *Form G-325A, Biographic Information sheet, for the applicant.* There is nothing in the record to show that he would be unable to contribute to his family's financial well-being from a place other than the United States. Additionally, the applicant's spouse has a history of work experience in accounting and sales. *Statement from the applicant's spouse, dated August 22, 2005; Form G-325A, Biographic Information sheet, for the applicant's spouse.* There is nothing in the record that shows the applicant's spouse would be unable to work due to her health condition or for any other reason. The applicant's spouse fears bombs and kidnapping in Colombia. *Statement from the applicant's spouse, dated August 22, 2005.* According to the United States Department of State, although serious problems remain, the government has taken steps to improve the human rights situation. Government statistics note that killings decreased by 10 percent, terrorist massacres by nearly 4 percent, killings of trade union leaders by 67 percents, and forced displacements by more than 27 percent. *Id.* While kidnapping, both for ransom and for political reasons, remains a serious problem, the number of kidnappings continues to decline. *Id.* According to the government's Presidential Program for Human Rights, 800 kidnappings occurred during 2005, a reduction of 44 percent compared with 2004. *Id.*

The Ministry of Defense reported 339 kidnappings for extortion through November 2005, a 51 percent decrease compared with the same period in 2004. *Id.*

Both the applicant and his spouse state they do not want their daughter to live in a country where she will not be safe from bombs or kidnappings. The applicant further contends that he can give his daughter nothing in Colombia. Counsel also notes that the applicant's spouse fears not only for her life in Colombia, but for her daughter's as well. However, as previously noted, the record offers insufficient evidence to demonstrate that country conditions in Colombia would result in extreme hardship for the applicant's daughter. Accordingly, the AAO finds that the applicant has not demonstrated extreme hardship to his spouse or his daughter if they were to reside in Colombia.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse has several family members in the United States, including her United States citizen child, her United States citizen mother, her lawful permanent resident father, her United States citizen brother, and her United States citizen aunt. *Attorney's brief; See also statements from family members.* As previously noted, the applicant's spouse suffers from rheumatoid arthritis. *Medical record, Health Network Chart Review Print*, dated January 29, 2003. The applicant states that on days his spouse feels sick and can hardly move, he is there for her and helps her with her personal things and with household chores. *Statement from the applicant*, dated August 24, 2005. While the AAO acknowledges the health condition of the applicant's spouse, it notes that the record does not include any information on the severity of the applicant's spouse's rheumatoid arthritis or how frequently it affects her daily activities. The record documents the applicant's spouse as having a consistent work history. It does indicate that her medical condition has prevented her from meeting her employment responsibilities. *Form G-325A, Biographic Information sheet, for the applicant's spouse; Employment letter for the applicant's spouse, CBT Operations Center*, dated July 19, 2005. Furthermore, the record does not mention whether there are any family members or friends who could assist the applicant's spouse with the household chores when she feels sick. The applicant's spouse states that the relationship she has with the applicant has always been made of respect and love. *Statement from the applicant's spouse*, dated August 22, 2005.

On appeal, counsel notes that if the applicant were to be removed from the United States, the impact on his daughter would be devastating. He fails, however, to identify any specific impacts that the applicant's removal would have on his daughter and the record offers no evidence to support his claim. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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). *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 daughter will endure hardship as a result of separation from the applicant. However, the record does not distinguish their situation, if they remain in the United States, from that of other individuals separated as a result of deportation or exclusion. Accordingly, it does not establish that the hardship experienced by the applicant's spouse and/or daughter would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse and daughter if they were to reside in 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)(i)(I) 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.