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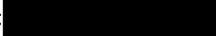
U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



MAY 23 2003

FILE:  Office: Panama

Date:

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(a)(9)(B)(v), 212(h) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v), 1182(h) and 1182(i)

ON BEHALF OF APPLICANT: Self-represented

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Panama City, Panama, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Colombia who was present in the United States without a lawful admission or parole on May 3, 1995, according to the Form I-130 petition and Form I-601 application, in August 1996 according to her Form G-325A signed under oath, or in February 1997 according to her statement to a consular officer. She departed the United States on August 19, 2000.

The applicant was found to be inadmissible to the United States by a consular officer under sections 212(a)(2)(A)(i)(I), 212(a)(6)(C)(i), and 212(a)(9)(B)(i)(II) 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, for having attempted to procure a visa or other documentation by fraud or misrepresentation, and for having been unlawfully present in the United States for a period of more than one year.

The applicant married a native of Colombia and United States citizen on February 25, 1997 and she is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of this permanent bar to admission as provided under sections 212(h), 212(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(h), 1182(i) and 1182(a)(9)(B)(v).

The record reflects that the applicant was arrested on December 29, 1998, and charged with shoplifting. She was convicted and sentenced to 10 days incarceration. The applicant failed to reveal her prior arrest and conviction to the consular officer during her interview on March 3, 2001.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed upon her United States citizen spouse and denied the application accordingly.

On appeal, the applicant's husband (hereafter referred to as Mr. [REDACTED]) states that he is now holding down two jobs, is madic [sic] depressive, his insurance does not cover all the psychiatric bills and medication, he has lost 30 pounds and has severe stomach pains from nerves.

An August 23, 2002 letter from a doctor at University Hospital in Newark, NJ indicates that Mr. [REDACTED] has been seen there since September 19, 2000 and has been diagnosed as Post-traumatic [sic] stress disorder with extreme bouts of madic [sic] depression/anxiety attacks. There is no indication of the method used to arrive at this diagnosis or what specific treatment was prescribed other than mentioning medications being a "temporary fix." Further, there is no indication of the qualifications of the physician who wrote the letter to make such a diagnosis. Therefore, the letter will be given no weight.

It is noted that the applicant indicated to the consular officer that Mr. [REDACTED] planned to come and live with her in Colombia because he

cannot bear to be without her. She made a generalized statement about the danger to American citizens living in Colombia.

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

(A)(i) 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,...is inadmissible.

Section 212(h) of the Act provides, in part, that:-The Attorney General [now Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I),...or subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if-

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General 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 is 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;...and

(2) the Attorney General 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 for adjustment of status...No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

Here, fewer than 15 years have elapsed since the applicant committed the last violation. Therefore, the applicant is ineligible for the waiver provided by section 212(h)(1)(A) of the Act.

Section 212(a)(6)(C) of the Act, provides, in part, that:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

(i) Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States, whether or not pursuant to section 244(e), prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure from the United States, is inadmissible.

(v) The Attorney General, has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a

decision or action by the Attorney General regarding a waiver under this clause.

Nothing could be clearer than Congress' desire in recent years to limit, rather than extend, the relief available to aliens who have committed crimes involving moral turpitude, fraud and misrepresentations and have remained unlawfully present in the United States. Congress has almost unfettered power to decide which aliens may come to and remain in this country. This power has been recognized repeatedly by the Supreme Court. See *Fiallo v. Bell*, 430 U.S. 787 (1977); *Reno v. Flores*, 507 U.S. 292 (1993); *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). See also *Matter of Yeung*, 21 I&N Dec. 610, 612 (BIA 1997).

Sections 212(h)(1)(B), 212(i), and 212(a)(9)(B)(v) of the Act all provide that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The key term in the provision is "extreme." Therefore, only in cases of great actual or prospective injury to the qualifying relative(s) will the bar be removed. Common results of the bar, such as separation or financial difficulties, in themselves, are insufficient to warrant approval of an application unless combined with much more extreme impacts. "Extreme hardship" to an alien himself cannot be considered in determining eligibility for waiver of inadmissibility in any of the above sections of the Act.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (the Board) stipulated that the factors deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act include, but are not limited to, the following: 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 finally, 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 Board noted in *Cervantes-Gonzalez* that the alien's wife knew that he was in deportation proceedings at the time they were married. The Board stated that this factor goes to the wife's expectations at the time they were wed. The alien's wife was aware that she may have to face the decision of parting from her husband or following him to Mexico in the event he was ordered deported. The alien's wife was also aware that a move to Mexico would separate her from her family in the United States. The Board found this to undermine the alien's argument that his wife will suffer extreme hardship if he is deported. The Board then refers to *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), where the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation. The common results of deportation are insufficient to prove extreme hardship.

The applicant in the present matter had been unlawfully present in the United States since 1995 or 1996 or 1997, depending upon the document reviewed, and it must be presumed that Mr. Diaz was aware of this when they married on February 25, 1997.

The Board in *Cervantes-Gonzalez, supra*, also referred to *Silverman v. Rogers*, 437 F.2d 102 (1st Cir. 1970), cert. denied 402 U.S. 983 (1971), where the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States."

The court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

It is noted that the Ninth Circuit Court of Appeals in *Carnalla-Muñoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), held that an after-acquired equity, referred to as an after-acquired family tie in *Matter of Tijam, supra*, need not be accorded great weight by the district director in considering discretionary weight. The applicant in the present matter entered the United States unlawfully in either 1995 or 1996 or 1997 and married her spouse in February 1997. She now seeks relief based on that after-acquired equity. However, as previously noted, a consideration of the Attorney General's discretion is applicable only after extreme hardship has been established.

There are no laws that require a United States citizen to leave the United States and live abroad. Further, the common results of deportation are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991). 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.

A review of the documentation in the record, when considered in its totality, fails to establish the existence of hardship over and above the normal economic and social disruptions involved in the deportation of a family member that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to remain in the United States. It is concluded that the applicant has not established the qualifying degree of hardship in this matter.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. 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.