

PUBLIC COPY

Identifying data should be
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services

H4

APR 02 2004

FILE:

[REDACTED]

Office: PANAMA CITY

Date:

IN RE:

[REDACTED]

APPLICATION:

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

ON BEHALF OF PETITIONER:

[REDACTED]

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 Officer in Charge, Panama City, Panama, 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 sections 212(a)(2)(A)(i)(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) and 1182(a)(9)(B)(i)(II), for having been convicted of a crime involving moral turpitude and for having been unlawfully present in the United States for a period of one year or more. The applicant is married to a United States citizen and seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(h) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and (h), so that he may reside in the United States with his spouse and children.

The officer in charge (OIC) concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) and Application for Permission to Reapply for Admission into the United States (Form I-212) accordingly. *See* Decision of the Officer in Charge, dated June 3, 2003.

The AAO notes that the Form I-292 Decision page announcing the decision states that the OIC is denying the applicant's Application for Waiver of Ground of Excludability (Form I-601) and Application for Permission to Reapply for Admission into the United States (Form I-212). *Id.* However, the focus of the discussion and the final determination of the OIC contained therein address the applicant's Form I-601, therefore the AAO likewise focuses on the waiver application and arrives at a decision solely regarding appeal of the Form I-601.

On appeal, counsel states that the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] abused its discretion and failed to give appropriate credit to the favorable factors of record.

The record contains copies of court documents relating to the applicant's criminal history; an affidavit of the applicant's spouse, dated May 29, 2002; a copy and translation of the Colombian birth certificate of the applicant; a copy and translation of the Colombian marriage certificate of the applicant and his spouse; copies of the U.S. birth certificates of the children of the applicant and a statement from the applicant, undated. The entire record was considered in rendering a decision on the appeal.

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

(B) Aliens Unlawfully Present. -

(i) In general. - 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 . . . 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, . . . is inadmissible.

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 [Secretary] 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.

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] may, in his discretion, waive the application of subparagraph (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 record reflects that on July 9, 1998, the applicant was convicted on federal charges of Possession of a Sawed-Off Shotgun and Receiving and Possessing an Unregulated Firearm. He was sentenced to 24 months imprisonment; 36 months supervised release and a \$100 assessment. The applicant is, therefore, inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act for committing a crime involving moral turpitude.

Further, the record reflects that the applicant entered the United States without inspection during May 1991 and remained illegally present until his removal on or about November 2, 1999. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until November 2, 1999, the date of his removal from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Sections 212(a)(9)(B)(v) and 212(h) waivers of the bars to admission resulting from sections 212(a)(9)(B)(i) and 212(a)(2)(A) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The AAO notes that section 212(h) also

allows for a showing that the bar imposes an extreme hardship to the citizen or lawfully resident child of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under sections 212(a)(9)(B)(v) and 212(h) of the Act. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Attorney General [Secretary] should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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 submits an affidavit of the applicant's spouse to support the proposition that she and their children will suffer extreme hardship if the applicant's waiver is denied. See Affidavit in Support of Waiver Application of [REDACTED] dated May 29, 2002. The applicant's spouse states that she and her children need the applicant and that the applicant "did what he did when he was very young and easily influenced by friends." *Id.* The statements of the applicant's spouse do not support a finding of extreme hardship. Although the applicant's spouse indicates that she and their children miss the applicant, she also states that her parents offer her emotional support and that she "has been able to keep herself together." *Id.* The record does not address the factors identified in *Matter of Cervantes-Gonzalez* and generally, does not provide a basis for a finding of extreme hardship.

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). 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 *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme 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. The AAO recognizes that the applicant's wife and children will endure hardship as a result of separation from the applicant. However, their situation, based on the record, is typical to individuals separated as a result of deportation or exclusion 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/or children 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 sections 212(a)(9)(B)(v) and 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.