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U.S. Citizenship
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Services

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[REDACTED]

FILE:

Office: COLUMBUS (CLEVELAND, OH)

Date: JAN 09 2008

IN RE:

Applicant:

[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:

[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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

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 United States citizen son.

The District 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. *District Director's Decision*, dated March 2, 2007.

On appeal, the applicant, through counsel, asserts that "[a]ccording to the facts of this case and applicable law, extreme hardship would result to [the applicant's] U.S. citizen spouse and a U.S. citizen child. As such, Application for Waiver of Grounds of Inadmissibility (I-601) was wrongfully denied." *Form I-290B*, filed April 4, 2007.

The record includes, but is not limited to, counsel's brief, statements from the applicant, his wife, and his son's mother, the applicant's marriage certificate, a psychological evaluation on the applicant's son, 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 February 21, 2001, the applicant was convicted of bribery of a public official and was sentenced to five (5) 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 February 24, 1999, the applicant entered the United States on a B-1 nonimmigrant visa, with authorization to remain in the United States until February 23, 2000. On March 3, 2000, the applicant was arrested for bribery of a public official. On July 27, 2000, a Notice to Appear (NTA) was issued against the applicant. On October 13, 2000, the applicant pled guilty to the charge and on February 21, 2001, a United States District Court judge convicted the applicant of bribery of a public official and sentenced the applicant to five (5) years probation. On May 18, 2002, the applicant's son, [REDACTED] was born in Georgia. On September 10, 2004, the applicant married [REDACTED], a United States citizen, in Ohio. On October 12, 2004, the applicant's wife filed a Form I-130 on behalf of the applicant. On June 18, 2005, the applicant's Form I-130 was approved. On February 20, 2006, the applicant's probation was terminated. On August 11, 2006, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) and a Form I-601. On March 2, 2007, the District Director denied the applicant's Form I-485 and 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 son. 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 relies on two AAO cases to support his assertion that the applicant wife and son will suffer extreme hardship if the applicant is removed from the United States. In *Re: Application for Waiver of Grounds of Inadmissibility under § 212(h) of the Immigration and Nationality Act*, 8 U.S.C. § 1182(h), dated March 8, 2005, the applicant was found to be inadmissible for having been convicted of a crime involving moral turpitude. The applicant's daughter was both physically and mentally disabled, who required 24-hour care, and the applicant was the primary wage earner. The AAO found that the "entire physical, emotional, and financial burden of caring for their severely handicapped daughter will fall solely on the applicant's wife, causing her to suffer negative consequences beyond those which could be considered the common result of a family separation." In *Re: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act*, 8 U.S.C. § 1182(i), dated May 12, 2004, the applicant was found to be inadmissible based on attempting to procure admission into the United States by fraud or willful misrepresentation. The applicant's husband was diagnosed with considerable depression and anxiety, based on 18 sessions with a psychologist, and because of this depression, he could not focus on operating his company. The AAO found "[w]hen viewed in its totality, the psychological and financial impact of the separation of [the applicant's husband] and the applicant rises to the level of extreme hardship." The AAO notes that both of the cases relied on by counsel are unpublished decisions, and therefore, not binding on anyone, including the AAO. Further, as discussed below, the level of hardship in this case is not of the same level as the cases cited by counsel.

Counsel asserts that the applicant's United States citizen wife and son would suffer extreme hardship if the applicant were removed from the United States. *Appeal Brief*, page 12, filed May 1, 2007. Counsel states the applicant's son suffers from Asperger Syndrome. *Id.* at 5. [REDACTED] states the applicant's son, [REDACTED] "was diagnosed with Asperger's Disorder on June 16, 2005 at the Emory Autism Center." *Case Review and Summary by [REDACTED] PhD*, dated July 27, 2006. [REDACTED] states the applicant "demonstrates a strong bond with his son.. [REDACTED] has developed a bond with his father that is no more or no less than the

bond most of us feel with our children or parents. What distinguishes [REDACTED] is that the absence of his trusted father is more likely to have a catastrophic outcome because of social and relational vulnerabilities associated with Asperger's disorder...The second finding regarding the potential impact of [the applicant's] absence also has to do with [REDACTED] s vulnerabilities due to Asperger's disorder. The nature of Asperger's disorder is such that many children with this disorder require lifelong emotional and financial supports." *Id.* Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted psychological evaluation is based on a single interview between the applicant, his son and the psychologist. There was no evidence submitted establishing an ongoing relationship between the psychologist and the applicant's son. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Additionally, the AAO notes that other than the psychological evaluation and statements by the applicant's family, there was nothing from a doctor diagnosing the applicant's son with autism, any prognosis or what assistance is needed and/or given by the applicant. Counsel asserts that the applicant's wife would suffer extreme hardship if the applicant is removed from the United States. *Appeal Brief, supra* at 10. The applicant's wife states that she "cannot imagine a life without [the applicant]...Financially [the applicant] and [her] share all of [their] expenses, and the loss of his income would have an immediate negative impact on [her] life. With his help, [they] are able to pay for [her] books and school supplies, auto insurance, clothing, and other things [they] need...Without him here, [she] would shoulder the burden of running the house, caring for [her] youngest sister and trying to complete [her] studies alone." *Statement from [REDACTED]*, undated. The AAO notes that the applicant's wife will be graduating from dental school in May 2008 and it has not been established that she could not join the applicant at that time or that she could not continue her studies in Colombia. *See letter from [REDACTED]*, D.D.S., dated September 5, 2006. Additionally, the AAO notes that the applicant worked as a dentist in Colombia. *Case Review and Summary [REDACTED]*, PhD, *supra*.

Further, the AAO notes that there was no documentation submitted establishing that the applicant's son could not receive treatment for his medical condition in Colombia and there is no indication that the applicant's son has to remain in the United States to receive any treatments. Additionally, it has not been established that the applicant's son, who is 5 years old, would have difficulties rising to the level of extreme hardship in adjusting to the culture of Colombia. The AAO finds that the applicant failed to establish that his wife and son would suffer extreme hardship if they accompanied him to Colombia.

In addition, counsel fails to establish extreme hardship to the applicant's wife and son if they remain in the United States. The AAO notes that the applicant's son resides with his mother in Georgia, while the applicant resides in Ohio. The applicant's son's mother states that her son would suffer financially if the applicant is removed from the United States. *See letter from [REDACTED]*, undated. 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. The AAO notes that the applicant is ordered to pay his son's mother \$552.00 a month; however, the applicant is a Colombian-trained dentist and it has not been established that he has no transferable skills that would aid him in obtaining a job in Colombia. The AAO notes that as United States citizens, the applicant's wife and son are not required to reside outside of the United States as a result of denial of the applicant's waiver request. The

applicant's wife states she would suffer financially if the applicant is removed from the United States; however, the AAO notes that the applicant's wife works on the weekends cleaning offices, she resides with her father, and she has student loans which help to pay for her dental school. *See letter from the applicant*, undated. 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 wife and son 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 son 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.