



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: MIAMI, FLORIDA

Date: JUL 21 2006

IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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 waiver application was denied by the District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Bolivia who is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks to adjust her status to that of lawful permanent resident (LPR); however, she was found to be inadmissible to the United States pursuant to § 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 seeks a waiver of inadmissibility pursuant to § 212(h) of the Act, 8 U.S.C. § 1182(h).

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. On appeal, counsel asserts that Citizenship and Immigration Services (CIS) abused its discretion in denying the waiver application, and failed to give proper weight to all the positive factors presented. The AAO has reviewed the entire record in rendering this decision.

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

(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.

Section 212(h) states in pertinent part that:

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-

(1)(A) [I]t is established to the satisfaction of the Attorney General that-

(i) [T]he 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 Attorney General 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.

In 2000, the applicant was convicted in Santa Cruz, Bolivia of criminal association, material and ideological falsification, usage of false instruments, and fraud. She was sentenced to three years' incarceration, but was released early. As she committed these crimes in 1998, less than fifteen years prior to her application for adjustment of status, the applicant is statutorily ineligible for a waiver pursuant to § 212(h)(1)(A) of the Act. She is, however, eligible to apply for a waiver of inadmissibility pursuant to § 212(h)(B) of the Act.

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 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.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). For example, *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 (9<sup>th</sup> 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. 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.

In his affidavit submitted on appeal, the applicant's husband states that he would not return to live in his native Bolivia with the applicant, because he has lived in the United States since he was three months old, and this is his home. His family lives in the United States, and he believes that his job prospects in Bolivia are very slim, given his lack of post-secondary education and Bolivia's weak economy. Counsel submits country conditions information about the economic situation in Bolivia, and, although it is clear that the average income in Bolivia is much lower than in the United States, there is no evidence regarding the applicant's husband's own employment outlook in Bolivia. The record does not establish that he and/or the applicant would be unable to support themselves through employment in Bolivia.

The applicant's husband also explains that he has a benign brain tumor for which he receives free medical care through his church. He states that he has undergone regular monitoring of the tumor, and he doubts that he would be able to obtain such free medical care in Bolivia. The record contains a medical evaluation dated December 3, 2004 that supports the applicant's husband's description of his condition. The medical evaluation indicates that the applicant's husband was to undergo a follow-up test one year from that date, and that he suffered from chronic headaches. It does not appear that the applicant's husband has any difficulty caring for himself or that he requires any medical intervention at this time. If, however, the applicant's

husband were to leave the United States, he would lose access to his free medical care, which could be considered extreme hardship, in light of his brain tumor.

Counsel asserts that if the applicant is removed from the United States and her husband remains here without her financial assistance, he will suffer extreme economic hardship. In his affidavit on appeal, the applicant's husband states that the applicant's income contributes to their household expenses, and that without her income, he would not be able to afford their apartment. He adds that he would have to support the applicant in Bolivia, as she would not earn enough money there to support herself. As noted above, however, the record does not establish that the applicant would be unable to contribute to her family's income from a location outside the United States. Moreover, the evidence does not show that she would be unable to avail herself of the assistance of family members in Bolivia.

In his statement on appeal, the applicant's husband writes that he would suffer extreme psychological hardship if he is separated from the applicant. The record includes a psychological evaluation dated January 17, 2005 performed by [REDACTED] Ms. [REDACTED] found that the applicant's spouse suffered from major depressive disorder, apparently due to his **difficult childhood and several subsequent traumatic** experiences, including the applicant's incarceration. Ms. [REDACTED] recommended that the applicant's husband begin professional therapy immediately to help him heal psychologically and so that he would already have established a relationship with a therapist if the applicant were removed. The psychological evaluation does not establish that if the applicant is removed, her husband will be at risk of harming himself or others, or of becoming unable to work or carry out his daily activities. The AAO does not disregard or take lightly the applicant's husband's concerns regarding the anxiety he will face due to the applicant's inadmissibility; however, his experience is not demonstrably more negative than that of other spouses separated as a result of removal.

The record, reviewed in its entirety, does not support a finding that if the applicant's spouse remains in the United States, he will face extreme hardship on account of the applicant's inadmissibility. Rather, the record indicates that his experience will be comparable to that of other individuals whose spouses are removed from the United States. In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.