

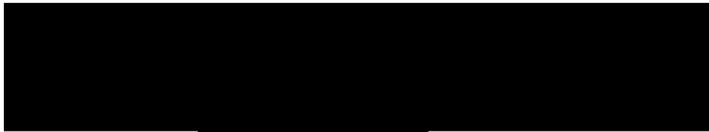


U.S. Citizenship
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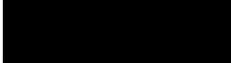
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FILE:



Office: MIAMI, FLORIDA

Date: MAR 27 2007

IN RE:



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:

SELF-REPRESENTED

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. 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 Brazil who is married to a U.S. citizen and is the beneficiary of an approved petition for alien relative. The applicant 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 several crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility in order to remain in the United States near his wife and children.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse and children. The application was denied accordingly. On appeal, the applicant's wife submits a letter in which she states that she, her daughter, and the applicant's other daughter would suffer extreme hardship if the applicant is removed. 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.

The applicant was convicted of the following crimes all in Broward County, Florida: battery and burglary of a conveyance and grand theft, on April 25, 1994; aggravated battery on a pregnant female, on October 25, 1995; probation violation/burglary of a conveyance and grand theft, on October 31, 1995; and probation violation/aggravated battery on a pregnant female, on December 8, 1998. As these crimes were committed less than 15 years prior to this application for adjustment of status, the applicant is statutorily ineligible for a waiver pursuant to § 212(h)(1)(A) of the Act. He 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. In the case at hand, the applicant's qualifying relatives are his U.S. citizen spouse and two daughters and his lawful permanent resident (LPR) mother.

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 (9th 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 (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. Moreover, the U.S. Supreme Court additionally 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 her September 12, 2005 letter submitted on appeal, the applicant's wife wrote that although she and the applicant were experiencing marital problems, and the applicant had not been working for several months, she considered the applicant to be a loving husband and father. She wrote that the applicant contributed financial support to their daughter and to his other U.S. citizen daughter by a different woman. The applicant's wife also wrote that their daughter counted on the applicant's being a part of her life. In his decision to deny the waiver, the district director noted that the evidence showed that the applicant and his wife were separated, and the applicant was unemployed. The evidence of record does not show that the applicant supports his wife or children. There is also no evidence on the record to the effect that the applicant's wife and daughter would suffer psychologically to a greater extent than other families of removed individuals.

The record includes letters written by the applicant's LPR mother and a physician, [REDACTED]. The applicant's mother stated that she requires the applicant's presence in the United States, because he buys her medicine, drives her around, and generally helps her. [REDACTED] wrote that the applicant's mother needs the

applicant's assistance, because she suffers from severe depression and epilepsy. [REDACTED] did not explain what the applicant is required to do for his mother, and the record does not establish that she has no other source of assistance. The evidence does not show that the applicant's absence would cause his mother to suffer in the extreme.

The record also contains a letter written by the mother of the applicant's eldest daughter. The applicant's former girlfriend wrote that their daughter is very attached to the applicant and would suffer greatly if she were unable to see him regularly. There is no evidence, however, that the applicant's daughter would experience greater emotional hardship upon their separation than other children whose parents are removed. The record also does not establish that the applicant's daughter would suffer financial hardship on account of his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse and children would suffer hardship that was unusual or beyond that which would normally be expected upon removal. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(h) of the Act, the burden of proving eligibility 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.