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U.S. Citizenship  
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FILE:



Office: MIAMI, FL

Date:

**FEB 27 2008**

IN RE: Applicant:



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:



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 Acting District Director, Miami, Florida and appealed to Administrative Appeals Office (AAO). The AAO rejected the appeal as untimely filed. Documentation was subsequently sent to the AAO establishing that the appeal was timely filed. The AAO will therefore withdraw its prior decision and sua sponte reopen the matter. The appeal will be dismissed.

The applicant, a native and citizen of Colombia, was found inadmissible to the United States under 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), for having been convicted of crimes involving moral turpitude. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his U.S. citizen spouse and children.

The acting district director 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 Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, dated June 22, 2006.

In support of the appeal, counsel submits a brief; a highlighted copy of the decision; copies of the applicant's U.S. citizen children's birth certificates<sup>1</sup>; and a copy of the applicant's spouse's naturalization certificate, issued on October 18, 1994. The entire record was reviewed and considered in rendering this decision.

Regarding the applicant's grounds of inadmissibility, the record reflects the commission of a crime involving moral turpitude. On February 27, 2002, the applicant was convicted by the State of Florida for the offence of Grand Theft Third Degree.<sup>2</sup> The Acting District Director found the applicant inadmissible based upon the applicant's commission of this crime involving moral turpitude. As this crime was committed after the applicant's eighteenth birthday, the acting district director correctly found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.<sup>3</sup>

Section 212(a)(2)(A)(i)(I) of the Act provides, in pertinent part:

(A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

<sup>1</sup> The applicant has two U.S. citizen sons, [REDACTED], born in 1992 and [REDACTED] born in 1988. In addition, the applicant's step-son, [REDACTED], a U.S. citizen, was born in 1991.

<sup>2</sup> The record indicates that the applicant's adjudication of guilt was withheld. Section 921.0011, Florida Statutes, defines a conviction as "...a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld..." As such, pursuant to the referenced definition, the applicant has been convicted of Grand Theft Third Degree.

<sup>3</sup> The record indicates that the applicant was also convicted of Assault of a Federal Agent, a violation of Title 18, USC Section 111, in January 1986. Counsel contends that this conviction is not a crime of moral turpitude. The record is unclear as to whether this conviction is a crime of moral turpitude. However, as the AAO has concluded that the above-referenced conviction for Grand Theft Third Degree is a crime of moral turpitude, a waiver of inadmissibility for the applicant remains a requisite.

- (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 pertinent part:

The Attorney General [now Secretary, Homeland Security, (Secretary)] may, in his discretion, waive the application of subparagraphs (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 . . . .<sup>4</sup>

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 is dependent first upon a showing that the inadmissibility bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son or daughter of the applicant. Hardship the applicant 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 U.S. citizen spouse and children. 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).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) the BIA held that:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

To begin, counsel asserts that the applicant's spouse and children will suffer emotional hardship were the applicant removed from the United States. As stated by the applicant's spouse,

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<sup>4</sup> The AAO notes that section 212(h) of the Act provides 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. Once extreme hardship is established, CIS must then assess whether to exercise favorable discretion.

...I can not imagine been [sic] alone in Miami with out him [the applicant]. He is supporting me financially and spiritually for 5 years already. Its not only me that depend on [redacted] [the applicant] but my son, my grandma, [redacted] children and his employees. [redacted] his older son is working with him and depend on him completely.... [redacted] is his youngest son and my son's best friend. If [redacted] goes, [redacted] will lose his best friend and his father. We all have a wonderful relationship and would be a tremendous hardship for all of us to stay here with out the head of the house, our priest, our provider....

Letter from [redacted], dated April 24, 2006.

The applicant's son echoes the sentiments expressed by the applicant's spouse:

My name is [redacted], the son of [redacted]. I was born on March 10<sup>th</sup>, 1992. At that time my parents were still together. Now I am 14 and live with my mother....

Every time I visit my father, I enjoy spending time with him and his family, especially his step son [redacted]. We always go out to the movies and arcades and have fun on the weekends. I never had any problems with his other family, and they treat me like I am part of their family too.

My dad also gave my brother a job, and helped him turn his life around. My brother used to have a bad attitude, but now he is doing well and making some money....

There are many reasons why I need my father to stay besides me in this country, one of them is for the big reason that he is my father and every time I really need him, he is there. Very often I heard bad news from Colombia, and I am very scared something bad is going to happen to him and don't see him again, that will be the worst disaster in my life....

Letter from [redacted]ez, dated April 22, 2006.

The documentation provided confirms that the applicant has played an important role in his family's lives. However, counsel has not established that any new arrangements for the applicant's spouse and/or children's emotional care, were the applicant removed, would cause them extreme hardship. Moreover, counsel references that the applicant's son [redacted], has learning disabilities and that the applicant's step-son [redacted], has "...psychological problems and has been under psychiatric care...." *Brief in Support of Appeal*. However, no documentation has been provided to corroborate these statements, such as a letter from [redacted]'s school and/or a letter from [redacted]'s psychiatrist, to further illustrate the hardship that the applicant's children would face if the applicant were removed from the United States. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of

counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. The prospect of separation or involuntary relocation nearly always results in hardship to individuals and families. In specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases.

Counsel further contends that the applicant's spouse and children will suffer financial hardship if the applicant were removed. As stated by the applicant,

I, [REDACTED] consider so important to be in this country for moral, emotional and financial support to my family. My wife, my three kids, my wife's grandmother, and my employees, are all very important to me. I am their financial supporter. Me and my wife, we own a small construction company, and thanks to God we are doing well.... In the case that I would be deported, and not be able to complete these projects, [REDACTED] [the applicant's spouse] will most likely go bankrupt, and there would be an economic disaster in her family, and at least 6 or 7 other families....

My kids depend on me, even my step son [REDACTED]. [REDACTED]'s father died last year, and before that [REDACTED] had not been with him for 10 years....

My other two children live with their mom who is emotionally unstable. [REDACTED] visits me where I live with my wife every weekend or when ever he needs me. My son [REDACTED] and my step son [REDACTED] get a long so good.... [REDACTED] goes to special school because he has learning disabilities and I am the one who pays for his school.

[REDACTED] is working with me from Monday to Friday and from 9:00 am to 5:00 pm, and then he goes to college at 6:00 pm. I am the one who is paying his college loan. I am paying for the car he is driving and we got his insurance together because he is a minor and can not get insurance of his own.

I divorced their mother six years ago but I'm always taking care of my children and providing for their mom....

Letter from [REDACTED] dated April 24, 2006.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, “[e]conomic disadvantage alone does not constitute “extreme hardship.” *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that “lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.”); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, “the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one’s home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent’s circumstances.”); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

In this case, counsel has provided no evidence with the appeal that establishes the applicant’s current financial contributions to the household, and thus has failed to show that the applicant’s absence, and the subsequent loss of the applicant’s income, will cause extreme financial hardship to the applicant’s spouse and children. Moreover, counsel does not provide current financial documentation with respect to the applicant’s businesses, to support the contention that without the applicant’s full-time presence, the businesses will not survive, thereby causing his spouse and children extreme financial hardship. Finally, it has not been established that the applicant’s spouse would not be able to find employment in Colombia, thereby providing the financial support that the applicant’s spouse and children require. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates with the applicant based on the denial of the applicant’s waiver request. With respect to the applicant’s spouse’s hardship were she to relocate abroad with the applicant, she states the following:

...In the event that [REDACTED] [the applicant] has to go, we have been planning to go to live to Colombia and move everything, our personal property, our family, our dogs, and our companies with all construction equipment to start building houses and to start building our lives in Colombia. We will also have to move our money in order to keep our real estate investment business. Humberto and I will survive if we have to move to another country....

*Supra* at 2. Based on the above statement, the applicant has not established that his spouse would face extreme hardship were she to reside abroad. In fact, the AAO notes that the applicant’s spouse appears ready and willing to relocate to Colombia should the waiver request be denied.

As for the applicant's children, the applicant's spouse states,

...it will be very difficult for his [the applicant's] children to live in another country because his children live with their mother and she will not leave them....

*Supra* at 2. No evidence has been provided that confirms that the children's mother would not allow them to reside in Colombia with the applicant. The AAO notes that in addition to the above statement from the applicant's spouse, no other corroborating documentation been provided regarding the hardships the applicant's sons and step-son would face were they to relocate. As previously stated, an assertion, without supporting documentation to establish the extreme hardship the applicant's children would face were they to accompany the applicant to Colombia, does not suffice to show extreme hardship.

As such, 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 extreme hardship if he were removed from the United States, and moreover, the applicant has failed to show that his U.S. citizen spouse and children would suffer extreme hardship were they to relocate to Colombia with him. 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 section 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. The waiver application will be denied.