

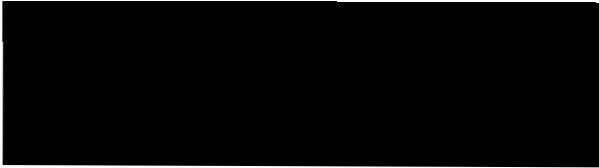
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: MEXICO CITY (PANAMA) Date: **NOV 06 2008**

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF PETITIONER:



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, Mexico City, Mexico, 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 section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having sought an immigration benefit by fraud or willful misrepresentation, and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more. The applicant is the wife of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)(v), in order to return to the United States and reside with her husband.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated July 6, 2006. The District Director also found the applicant inadmissible under section 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II), because she sought admission within ten years of removal from the United States, and denied the applicant's Permission to Reapply for Admission Into the United States after Deportation or Removal (Form I-212). *See Decision of the District Director* dated July 6, 2006.

On appeal, counsel states that the applicant's husband would suffer extreme hardship if the applicant is refused admission to the United States. Specifically, counsel asserts that the applicant's husband would suffer emotional hardship if he relocated to Colombia due to separation from his two U.S. Citizen children who reside in Miami, Florida, or if he remained in the United States and were separated from the applicant. *Brief in Support of Appeal* at 4-7. Counsel additionally asserts that the applicant's husband would suffer hardship if he relocated to Colombia because he has resided in the United States for twenty-two years and has a profitable business from which he earns a good income. *Brief* at 7. Counsel states that the applicant's husband would have limited employment opportunities in Colombia and would experience hardship because of poor economic conditions and concerns over his family's security in light of the ongoing conflict with guerrilla groups there. *Brief* at 8. Documentation submitted in support of the waiver application and appeal includes copies of the applicant's husband's children's birth certificates; a copy of the applicant's husband's marital settlement agreement addressing custody, visitation, and support of his two children; letters from the applicant and her husband as well as from friends and relatives in Colombia; evidence of the applicant's husband's payment of child support and school tuition for his two children; a psychological evaluation of the applicant's husband; income tax returns for the applicant's husband's business; and information on economic conditions in Colombia. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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

- (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who –
 - (II) Has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
- (v) Waiver. – The Attorney General [now Secretary, 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.

The applicant was convicted of bribery under 18 U.S.C. § 201(b), which provides in pertinent part:

Sec. 201. Bribery of public officials and witnesses

(b) Whoever--

(1) directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent--

(A) to influence any official act; or

(B) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of the lawful duty of such official or person;

shall be fined under this title or not more than three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

This crime has been found to be a crime involving moral turpitude because a corrupt mind is an essential element of the offense. *See Okabe v. Immigration and Naturalization Service*, 671 F.2d 863 (1982); *United States v. Jacobs*, 431 F.2d 754 (2nd Cir. 1970); *in Re H-*, 6 I & N Dec. 358 (1954); *in Re V-*, 4 I & N Dec. 100 (1950). The maximum sentence for this offense is fifteen years, and the applicant is therefore inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude.

The AAO further notes that it does not appear that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act because she did not attempt to gain admission to the United States or an immigration benefit through fraud or misrepresentation to a government official, but rather attempted to bribe an immigration officer to induce him to knowingly provide her with documentation. The applicant is, however, inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States from April 1, 1997, the date section 212(a)(9)(B)(i)(II) of the Act entered into effect, to May 15, 2003, when she left the United States under an order of voluntary departure. The applicant is therefore required to seek a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act. Section 212(a)(9)(B)(v) 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, 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 AAO further notes that the applicant did not depart the United States under an order of removal, but rather complied with the immigration judge's order to voluntarily depart the United States by May 27, 2003. *See* Form G-146, signed on May 22, 2003, indicating that the applicant departed the United States on May 15, 2003. The applicant is therefore not inadmissible under section 212(a)(9)(A)(ii)(II) of the Act, and is not required to apply for Permission to Reapply for Admission Into the United States after Deportation or Removal (Form I-212).

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 (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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. 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 the present case, the record reflects that the applicant is a thirty-six year-old native and citizen of Colombia who resided in the United States from August 4, 1996, when she was admitted as a B-2 visitor for pleasure with authorization to remain until February 3, 1997, to May 15, 2003, when she departed under an order of voluntary departure. The applicant married her husband, a forty year-old native of Colombia and citizen of the United States, on November 15, 2004, in Colombia. The applicant currently resides in Santa Rosa de Cabal, Colombia and her husband resides in Miami, Florida.

Counsel asserts that the applicant’s husband would suffer extreme hardship if he relocated to Colombia because he would be separated from his two U.S. Citizen children and would have to abandon a successful business. In support of this assertion counsel submitted birth certificates for the applicant’s husband’s children, a copy of a marital settlement agreement, photographs of the applicant and his children, and tax returns for his business indicating that it earned a net income of \$102,402 in 2004 and \$65,645 in 2005. Counsel further states that the applicant’s husband, who has resided in the United States for twenty-two years, would have difficulty readjusting to life and finding employment in Colombia, and submitted documentation concerning economic conditions in Colombia. The applicant’s husband further states, “I cannot move to Colombia because I own my business and it is my main source of income.” *See Letter from* [REDACTED] dated January 13, 2006.

It appears that the emotional effects of being separated from his two children and the financial effects of abandoning his business in the United States, combined with hardship caused by economic and security conditions in Colombia, would cause the applicant’s husband to suffer hardship that is more serious than the type of hardship a family member would normally suffer as a result of removal or inadmissibility. When considered in the aggregate, the emotional hardship to the applicant’s husband if he relocated and had to sever ties with his two children and lost his business, which is profitable and allows him to support himself and his family, would constitute extreme hardship. This finding is largely based on evidence submitted with the appeal that indicates that the applicant’s husband lives close to his two children from a previous marriage, spends a large amount of time with them and coaches his son’s soccer team, and provides significant financial support to his children, including school tuition and \$2000 per month in child support. The emotional effects of being separated from his children and not being able to provide for them if he relocated to Colombia, combined with the hardship of losing his income and facing difficult economic conditions in Colombia, would rise to the level of extreme hardship. Further, as noted above, separation from close family members is a primary concern in assessing extreme hardship. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998).

Counsel asserts that the applicant’s husband would suffer extreme hardship if he remained in the United States, including emotional and psychological hardship as a result of being separated from the applicant. In his letter, the applicant’s husband states:

It would cause *emotional hardship* to me if I am not allowed to live with my wife in the United States. [REDACTED] and I know each other since our teen years. . . . I love my wife and

consider her an important part of my emotional wellbeing. I think every person needs a balanced emotional life to be part of a productive society. . . . *Letter from* [REDACTED] dated January 13, 2006.

In support of these assertions, counsel submitted a report from a psychologist who evaluated the applicant's husband on August 21, 2006. The report states that the applicant's husband is suffering from insomnia, irritability, difficulty concentrating, and headaches and also feels sadness over being separated from his wife. *See Report from* [REDACTED] dated September 3, 2006, at 3. The report further states that the applicant's husband noted that he would have a very difficult time if he had to relocate to Colombia, and would also suffer extreme hardship if he could not be with his children or take care of them properly. *Report from* [REDACTED] at 4. It states that having to choose whether to relocate to Colombia to be with the applicant or remain in the United States with his children is extremely difficult for the applicant's husband, "and he is in fact suffering from a reactive Major Depression because of the potential for having to make such a decision," and his depression would become worse if he had to make such a decision. *Report from* [REDACTED] at 4. The input of any mental health professional is respected and valuable in assessing a claim of emotional hardship. The AAO notes, however, that although the submitted letter is based on a psychological evaluation of the applicant's husband, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's husband or any history of treatment for his depression. The conclusions reached in the submitted evaluation, being based on one 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. Further, there is no evidence that [REDACTED] or any other mental health professional provided any follow-up treatment, despite the diagnosis of major depression.

The evidence on the record is insufficient to establish that any emotional and psychological hardship the applicant's husband would suffer if he remained in the United States without the applicant would amount to extreme hardship. Although the depth of the applicant's husband's distress over the prospect of continued separation from the applicant is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But 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 exists.

The emotional hardship the applicant's husband would experience if he remains in the United States appears to be the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship).

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her U.S. Citizen spouse would suffer extreme hardship if she were denied admission and

he remained in the United States. 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(a)(9)(B)(v) 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.