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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

*H2*

FILE:

Office:

MIAMI, FL

Date:

APR 02 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink that reads "John F. Grissom".

John F. Grissom  
Acting 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, a native and citizen of Ecuador, 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 multiple crimes involving moral turpitude and for having been convicted of a controlled substance violation under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II). In addition, the AAO notes that the applicant is inadmissible under section 212(a)(2)(D)(i) of the Act, 8 U.S.C. § 1182(a)(2)(D)(i), for prostitution related activity. **The applicant does not contest the district director's findings. He 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 U.S. citizen spouse and child, born in March 2004.**<sup>1</sup>

The district director concluded that 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 District Director*, dated September 6, 2006.

On appeal, counsel for the applicant submits a letter, dated August 2, 2007, and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2) 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-

- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
- (II) a violation of...any law or regulation of a State, the United States, or a foreign country relating to a controlled substance... is inadmissible.

(D) Any alien who—

- (i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10

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<sup>1</sup> The record establishes that the applicant's spouse was due to have a second child in December 2006. No evidence was provided to establish said child's U.S. birth. As such, any statements made by the applicant and/or his spouse regarding hardships that their unborn child would face were the applicant removed from the United States are speculative and can not be considered by the AAO at this time.

years of the date of application for a visa, admission, or adjustment of status . . . 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), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana 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 . . .

In April 1996, the applicant entered a plea of nolo contendere to the offense of theft, a violation of section 812.014 of the Florida Statutes Annotated. In August 1997, the applicant was convicted of soliciting prostitution, a violation of section 796.07 of the Florida Statutes Annotated. In November 1998, the applicant entered a plea of nolo contendere to the offense of marijuana possession (20 grams or less), a violation of section 893.13 of the Florida Statutes Annotated. In January 2001, the applicant entered a plea of nolo contendere to Battery, a violation of section 784.04 of the Florida Statutes Annotated. The applicant's above-referenced drug conviction automatically renders him inadmissible under section 212(a)(2)(A)(i)(II) of the Act. However, as said drug conviction related to a single offense of less than 30 grams of marijuana, the applicant is eligible to apply for a section 212(h) waiver.<sup>2</sup>

A section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2) 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 experiences upon removal is irrelevant to section 212(h) waiver proceedings; the relevant hardships in the present case are the hardships suffered by the applicant's U.S. citizen spouse and child.

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<sup>2</sup> As the applicant is clearly inadmissible under section 212(a)(2)(A)(i)(II), for having been convicted of a controlled substance violation, the AAO does not find it necessary to analyze whether the applicant's convictions for theft and battery make the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act, for crimes involving moral turpitude, and/or whether his conviction for soliciting prostitution makes him inadmissible under section 212(a)(2)(D)(i) of the Act, for prostitution related activity.

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.

The applicant’s U.S. citizen spouse contends that she will suffer emotional, psychological and financial hardship if the applicant’s waiver is not granted. In a letter she states that she would suffer extreme emotional and psychological hardship due to the long and close relationship she and her child have with the applicant. The applicant also documents that she has obtained medical treatment and medication for bipolar affective disorder, a disease she has battled for most of her life. In addition, she contends that she would suffer extreme financial hardship as her spouse is the primary breadwinner for the family and due to his absence, she would have to maintain the home and care for herself and her children without the applicant’s support. *Letter from* [REDACTED] dated September 24, 2006.

In support of the applicant’s spouse’s mental health condition, a letter is provided by [REDACTED] [REDACTED] who confirms that the applicant’s spouse is being treated for Bipolar Affective Disorder. *Letter from* [REDACTED] dated September 19, 2006.

Based on the documentation provided by counsel with respect to the applicant’s spouse mental health condition, the gravity and unpredictability of the symptoms associated with the referenced disorder, the short and long-term ramifications for those afflicted and the need for those suffering from the above-referenced disorder to be consistently monitored and/or treated by mental health professionals familiar with the condition and its treatment, the AAO concludes that a separation at this time would cause hardship beyond that normally expected of one facing the removal of a spouse.

Moreover, were the applicant unable to reside in the United States, the applicant’s U.S. citizen spouse, under treatment for a serious mental health disorder, namely Bipolar Affective Disorder, would have to assume the role of primary caregiver and breadwinner to two young children without her husband's complete emotional, psychological, physical and financial support. The AAO thus concludes that the applicant’s U.S. citizen spouse would suffer extreme hardship were the applicant to reside abroad while she remains in the United States.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, the applicant has not asserted any reasons why the applicant's U.S. citizen spouse and/or child are unable to relocate to Ecuador to reside with the applicant.

A review of the documentation in the record, when considered in its totality reflects that although the applicant has established that his U.S. citizen spouse would suffer extreme hardship were she to remain in the United States while the applicant resided abroad, the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if she were to accompany the applicant abroad were he removed. 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 is denied.