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U.S. Citizenship
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FILE:

Office: MIAMI, FLORIDA

Date: FEB 19 2009

IN RE:

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, appearing to read "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 is a native and citizen of Colombia who was found to be inadmissible to the United States pursuant to 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 seeks 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 and reside with her U.S. citizen husband.

The district director concluded that the applicant 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 August 24, 2006.

On appeal, counsel for the applicant asserts that the applicant has shown that her husband will experience extreme hardship if the present waiver application is denied. *Brief from Counsel*, dated October 2, 2006. Counsel asserts that the district director referenced decisions regarding prior cases that do not have a bearing on the present matter. *Id.* at 2. Counsel further asserts that the district director violated the U.S. Constitution by failing to permit the applicant the opportunity to submit new evidence, or considering all of the evidence that was submitted. *Id.*

The record contains a brief from counsel; a birth record for the applicant, as well as the applicant's brother, son, daughter, and husband; medical documentation for the applicant's husband; documentation in connection with the applicant's sister's mortgage; a copy of the applicant's identification card; a copy of the applicant's husband's driver's license; a copy of the applicant's husband's naturalization certificate; copies of the applicant's husband's Cuban passport and voter registration; a copy of an article that reflects that the applicant's husband was in a traffic accident; copies of naturalization certificates and passports for additional members of the applicant's husband's family; a copy of the U.S. passport for the applicant's mother-in-law; a letter from the applicant's mother-in-law; copies of documents relating to the applicant's mother-in-law's prescriptions; documentation relating to the applicant's husband's business; reports on conditions in Colombia; copies of tax records for the applicant and her husband; a copy of the applicant's marriage certificate, and; copies of documents relating to the applicant's criminal convictions. The entire record was reviewed and considered 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) of the Act provides, in pertinent part, that:

- (h) The Attorney General [now Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) [or] (B) . . . of subsection (a)(2) . . . if -
- (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -
- (i) . . . the 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
- (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 [now the Secretary of Homeland Security (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

The record reflects that the applicant pled *nolo contendere* to Grand Theft in the Third Degree, Fraudulent Use of a Credit Card, and Forgery of a Credit Card regarding her conduct on June 1, 1994. The Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida withheld adjudication of guilt, but sentenced the applicant to three years of probation and payment of restitution.

The Board of Immigration Appeals held that withholding adjudication of guilt in Florida constitutes a conviction for purposes of determining inadmissibility under the Act if certain conditions are met. *See Matter of Ozkok*, 19 I&N Dec. 546 (BIA 1988). These conditions include: (1) the applicant entered a plea of guilty, (2) the judge has ordered some form of punishment, penalty, or restraint on the applicant's liberty to be imposed, and (3) a judgment or adjudication of guilt may be entered if the applicant violates the terms of her probation or fails to comply with the requirements of the court's order, without availability of further proceedings regarding her guilt or innocence of the original charge. *Id.* at 547. In the present matter, the court's withholding of adjudication of guilt constitutes three convictions, as the applicant entered the equivalent of guilty pleas, punishment was imposed, and the record reflects that a finding of guilt could be entered without further proceedings

should the applicant violate the terms of her probation. *Id.*; *Order of Probation*, at 3, recorded October 27, 1994.

There is ample support that Grand Theft in the Third Degree, Fraudulent Use of a Credit Card, and Forgery of a Credit Card are crimes involving moral turpitude. *See, e.g., Matter of Chouinard*, 11 I&N Dec. 839 (BIA 1966). Accordingly, the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude.

It is noted that the applicant is not eligible to be considered for a waiver under the standard set in section 212(h)(1)(A) of the Act, as 15 years have not passed since she committed the conduct that led to her *nolo contendere* pleas. Section 212(h)(1)(A)(i) of the Act.

The AAO notes that section 212(h)(1)(B) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. Hardship the applicant experiences due to her inadmissibility is not a basis for a waiver under section 212(h) of the Act; the only relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen husband. *Id.* If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) 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.

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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

On appeal, counsel for the applicant asserts that the applicant has shown that her husband will experience extreme hardship if the present waiver application is denied. *Brief from Counsel*, dated October 2, 2006.

Counsel states that the applicant's U.S. citizen husband has been living in the United States since before age three. *Id.* at 5. He explains that the applicant's husband does not speak Spanish fluently and he does not write in Spanish. *Id.* Counsel indicates that the applicant's husband has an adult U.S. citizen daughter who resides with his ex-wife. *Id.* Counsel states that the applicant's husband has a U.S. citizen sister and brother, and that he lives with and assists his U.S. citizen mother. *Id.*

Counsel states that the applicant's husband suffered an accident that resulted in significant loss of capability in his right arm, rendering him only able to lift five pounds. *Id.* at 6. Counsel asserts that the applicant's husband could qualify for disability, but he chooses to work. *Id.*

Counsel notes that the applicant has a relationship with her permanent resident brother, and that she has two adult sons with separate lives in Colombia. *Id.*

Counsel asserts that the applicant's and her husband's marriage will be destroyed if the applicant's husband remains in the United States without the applicant. *Id.* at 10, 17.

Counsel contends that relocating to Colombia will create significant hardship for the applicant's husband. *Id.* at 10. Counsel contends that Colombia is a dangerous country where U.S. citizens are kidnapped, harmed, and threatened. *Id.* Counsel cites to reports that reflect that the applicant's husband may be at risk of harm in Colombia. *Id.* at 13-14. Counsel explains that the applicant's husband will experience emotional hardship if he is separated from his mother who he assists. *Id.* at 14. Counsel suggests that the applicant's husband would have difficulty securing employment in Colombia due to the injury to his arm. *Id.* at 14-15. Counsel asserts that the applicant's husband would lose his right to vote in U.S. elections should he depart the United States. *Id.* at 15. Counsel asserts that the applicant's husband will endure economic hardship should he relocate to Colombia, as he has invested in a truck to operate his business in the United States, and he must work as a truck driver to continue. *Id.* Counsel contends that the applicant's husband would have reduced access to social security health care benefits. *Id.*

Counsel asserts that the district director referenced decisions regarding prior cases that do not have a bearing on the present matter. *Id.* at 2. Counsel further asserts that the district director violated the U.S. Constitution by failing to permit the applicant the opportunity to submit new evidence, or considering all of the evidence that was submitted. *Id.*

The applicant's mother-in-law stated that she needs the applicant's husband with her to take care of her emotionally and financially. *Statement from Applicant's Mother-in-law*, dated September 29, 2006. She indicated that the applicant's husband will be compelled to relocate abroad if the applicant departs the United States. *Id.* at 1. She indicated that she is 73 years old and she has a nervous system illness for which she was hospitalized in 1969, thus she has difficulty coping with emotional issues and bad news. *Id.*

The applicant described conditions in Colombia and asserted that her husband would suffer hardship should he relocate there. *Statement from the Applicant*, undated. She stated that she and her husband have been married for almost 10 years and that living together and sharing their lives is important to them. *Id.* at 5.

Upon review, the applicant has not shown that her husband will suffer extreme hardship should she be prohibited from remaining in the United States. Specifically, the applicant has not provided sufficient documentation or explanation to show that her husband will endure extreme hardship

should the applicant depart and he remain. The applicant and her husband have been married since February 21, 1997, for approximately 12 years. The AAO acknowledges that involuntary family separation often involves significant emotional hardship. However, the applicant has not shown that her husband's hardship, should he remain in the United States without her, can be distinguished from that commonly experienced by families who are separated due to inadmissibility. U.S. court decisions have 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.

The applicant has not asserted or shown that her husband relies on her for economic support. While the record reflects that the applicant's husband cares for his mother, the applicant has not asserted that she takes part in providing such care, such that her absence would place additional burden on her husband.

The focus of counsel's assertions regarding hardship to the applicant's husband focus on hardship he would experience should he relocate to Colombia. The AAO agrees that the applicant's husband would experience extreme hardship should he relocate to Colombia. This is based on challenging and sometimes dangerous conditions in Colombia, as well as the facts that the applicant's husband would face language and cultural difficulty, the loss of his business and employment, separation from his mother and relatives in the United States, difficulty securing new employment due to his prior injury, and the fact that he has resided in the United States for a lengthy duration.

However, as noted above, in order to show eligibility for a waiver, the applicant must establish that denial of the application "would result in extreme hardship" to her husband. Section 212(h)(1)(B) of the Act. Denial of the present waiver application does not require the applicant's husband to depart the United States. While the AAO acknowledges the emotional consequences of family separation, the applicant has not shown that her husband would experience extreme hardship should she depart the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

The applicant is not eligible for a waiver of inadmissibility under section 212(h)(1)(B) of the Act. In her statement, the applicant discussed her eligibility under the standard of section 212(h)(1)(A) of the Act. As observed by the applicant, the activities for which she is inadmissible occurred less than 15 years before the date of her application for adjustment of status, thus she is not yet eligible for consideration under section 212(h)(1)(A) of the Act. However, the applicant is free to apply for any relief to which she may be eligible, including filing a new Form I-601 application for a waiver

pursuant to the standard of section 212(h)(1)(A) of the Act should she meet the requirements at a future time.

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. *See* 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.