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



U.S. Citizenship
and Immigration
Services

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FILE:



Office: MIAMI, FL

Date: JUL 14 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).

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 record reflects that the applicant is a native and citizen of Argentina 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 a crime involving moral turpitude. The applicant's spouse and two stepchildren are U.S. citizens. The applicant seeks a waiver of inadmissibility in order to reside in the United States.

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 for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, at 4, dated November 19, 2007.

On appeal, counsel asserts that the applicant's spouse will suffer extreme and unusual hardship if the I-601 waiver is not approved. *Form I-290B*, received December 19, 2007.

The record includes, but is not limited to, counsel's brief, medical records for the applicant's spouse, evidence of child support and financial documents.

The record reflects that on July 19, 2006, the applicant was convicted of felony battery under Florida Statutes § 784.041, which states:

- (1) A person commits felony battery if he or she:
 - (a) Actually and intentionally touches or strikes another person against the will of the other; and
 - (b) Causes great bodily harm, permanent disability, or permanent disfigurement.

As the applicant was convicted of intentionally touching/striking another individual and causing great bodily harm, permanent disability or permanent disfigurement, the AAO finds that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude.

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...

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) . . . of subsection (a)(2) and 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.

The applicant is eligible to file for a section 212(h) waiver. 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, in this case the applicant’s spouse and the stepchildren. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

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 lawful permanent resident or United States citizen family ties to 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to a qualifying relative must be established whether the qualifying relative resides in Argentina or the United States, as the qualifying relative is not required to reside outside the United States based on the denial of the applicant’s waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event that the qualifying relative resides in Argentina. Counsel states that the applicant’s spouse was born in the United States; she has lived in the United States her entire life; her entire immediate family is composed of U.S. citizens; she has no family outside of the United States; she is extremely close to her family; she has never lived far from her family; she is undergoing physical exams and observation due to ovarian cysts; her parents and siblings would not be able to travel to Argentina on a constant basis due to the long flight and cost of transportation;

telephone contact would be extremely costly; the children's biological father is exercising his visitation rights and this will be affected if the children relocate to Argentina; relocation may result in the applicant's spouse being separated from her children; the applicant's spouse has no emotional, cultural or religious ties to Argentina; it would be a terrible ordeal for her and her children to reside there; Argentina's economy and currency have collapsed; the applicant's spouse is gainfully employed in the United States; there is economic discrimination in Argentina against women; access to schooling in some rural areas of Argentina is limited; and children in Argentina have been involved in sexual exploitation, sex tourism and drug trafficking. *Brief in Support of Appeal*, at 5-8, dated January 17, 2008. The record reflects that the applicant's spouse has a small right ovarian cyst and a moderate amount of free fluid in the pelvis and right adnexa. *Applicant's Spouse's Medical Records*, dated June 27, 2007. The record is not clear as to the severity of her medical problem and does not indicate that she would need to remain in the United States for treatment. The record includes evidence of employment for the applicant's spouse. The record reflects that the applicant's spouse has shared parental responsibility of her two children with her ex-spouse. *Applicant's Spouse's Final Judgment of Dissolution of Marriage*, at 2, dated March 10, 2004. However, the record is not clear as to whether the applicant's ex-spouse would oppose her taking the children to Argentina, thereby causing her to be separated from her two young children. In addition, the record does not include supporting documentary evidence for counsel's claims regarding country conditions and financial issues in Argentina. The 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). Based on the record, the applicant has not established that the applicant's spouse or stepchildren would suffer extreme hardship upon residing in Argentina permanently.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. Counsel states that the applicant makes 80 percent of the couple's annual income, and the applicant's spouse's \$2000 monthly income and \$295 monthly child support will not be sufficient to provide for the children and herself. *Brief in Support of Appeal*, at 6. The applicant's spouse states that her children barely see their father and he does not provide any real monetary support; the applicant provides love, affection, and moral support to her and her kids; he is the main economic provider of the family; she cannot provide for her family by herself; the applicant started a business which has been doing extremely well; if the success of the company continues, she will be able to go back to school and get a career; and she and the applicant will be able to give her children a college education. *Applicant's Spouse's Statement*, at 2, dated August 28, 2006. The record reflects that the applicant's ex-spouse has not been making child support payments. *Recommended Orders*, dated July 14 and 15, 2005. However, the record does not include sufficient documentation of the finances of the applicant and his spouse, the emotional impact that the applicant's removal would have on his spouse and/or stepchildren or any other forms of hardship, which, in the aggregate, would establish extreme hardship to a qualifying relative upon remaining in the United States.

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.

A review of the documentation in the record, when considered in its totality, finds that the applicant has failed to show that a qualifying relative would suffer extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in an additional discussion of whether he 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. *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.