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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

*Hr*

FILE:

Office: MIAMI, FL

Date:

JUN 01 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 applicant, a native and citizen of Colombia, was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I) for having been convicted of a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility in order to reside with his U.S. citizen spouse and step-daughter, born in 1988.

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*, dated January 14, 2007.<sup>1</sup>

On appeal, counsel for the applicant submitted the Form I-290B, Notice of Appeal (Form I-290B). On the Form I-290B, counsel requested 30 days to submit a brief and/or evidence to the AAO. To date, no additional documentation has been sent by counsel and/or the applicant and thus, the record is considered complete.

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

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 -

(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 . . .

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<sup>1</sup> Although the district director dated the decision January 14, 2007, the AAO notes that said date appears to be in error, based on the fact that the applicant did not submit the Form I-601 until September 2007. It appears that the district director should have noted the date on his decision as January 14, 2008.

- (2) The Attorney General (Secretary), in his discretion . . . has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

The record indicates that the applicant was convicted in April 2004 of a third degree felony, Possession of a Motor Vehicle with Vehicle Identification Number (VIN) Removed, a violation of section 319.33(1)(d) of the Florida Statutes, based on an October 2003 incident and arrest.<sup>2</sup> No prison sentence was imposed. Based on a thorough review of the record, the AAO concurs with the district director that the above-referenced conviction makes the applicant inadmissible under 212(a)(2)(A)(i)(I) of the Act, as any crime involving fraud, as is the case here, is a crime involving moral turpitude. *Burr v. INS*, 350 F.2d 87, 91 (9th Cir. 1965), *cert denied*, 383 U.S. 915 (1966).<sup>3</sup> The applicant is eligible for a section 212(h) waiver.

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 step-daughter.

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

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<sup>2</sup> Section 319.33(1)(d) of the Florida Statutes states, in pertinent part:

Offenses involving vehicle identification numbers, applications, certificates, papers; penalty

- (1) It is unlawful:

(d) To possess, sell or offer for sale, conceal, or dispose of in this state a motor vehicle or mobile home, or major component part thereof, on which any motor number or vehicle identification number [VIN] that has been affixed by the manufacturer or by a state agency, such as the Department of Highway Safety and Motor Vehicles, which regulates motor vehicles has been destroyed, removed, covered, altered, or defaced, with knowledge of such destruction, removal, covering, alteration, or defacement, except as provided in s. 319.30(4).

<sup>3</sup> The record establishes that "the def [the applicant] was stopped...for a temp tag...that was taped over and clearly altered whereas the expiration date and year were large, out of shape and placed atop the original tag on the tape.... [I]n the veh [vehicle] after the arrest and upon an investigation to tow, the def has fake, altered copies of past fake temp tags to this vehicle dating back to 03-18-03 which shows that the def had no intention of registering his vehicle.... There was also scrape marks on the VIN in the back of the engine compartment indicating possible alteration. There were no VIN indentation marks in several places about the veh where there should have been. The def stated that he was aware of the multiple VINs but could not explain it...." See *Probable Cause Affidavit*, dated October 8, 2003.

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 contends that his U.S. citizen spouse and step-daughter will suffer emotional, physical and financial hardship if he is removed from the United States. In a declaration he asserts that his spouse is ill, suffering from severe colitis, a sickness that does not “allow her [the applicant’s spouse] to retain the food and she suffers of constant vomit and diarrhea, which makes impossible for her to go to work for several days and to do tasks at home, worsening her medical condition...” As for his step-daughter, the applicant asserts that she is pregnant and needs her step-father’s support on a daily basis. *Letter from [REDACTED] dated September 10, 2007.*

It has not been established that the applicant’s spouse and/or step-daughter will suffer extreme emotional hardship were the applicant to relocate abroad due to his inadmissibility. In addition, it has not been established that the applicant’s spouse and/or step-daughter are unable to travel to Colombia to visit the applicant regularly. Finally, as noted by the district director, no documentation has been provided from the applicant’s spouse’s treating physician, outlining her current medical condition, the gravity of the situation, the short and long-term treatment plan and what specific hardships the applicant’s spouse will endure due to the applicant’s physical absence from the United States.

The AAO recognizes that the applicant’s spouse and step-daughter will endure hardship as a result of separation from the applicant. However, their situation, if they remain in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal 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.

As for the financial hardship referenced above, the AAO notes that 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).

No documentation has been provided that outlines the applicant's, his spouse's and his step-daughter's current financial situation, including income, expenses, assets and liabilities, and their financial needs, to establish that without the applicant's continued presence in the United States, their financial hardship would be extreme. Moreover, counsel provides no objective documentation that confirms that the applicant would be unable to find gainful employment in Colombia that would allow him to assist his family in the United States financially should the need arise. Finally, with respect to the applicant's step-daughter, it has not been established that the father of her child and/or her own biological father are unable to assist the applicant's step-daughter financially should she need such support. 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)). As such, the record fails to establish that the applicant's spouse's and/or step-daughter's continued care and emotional and financial survival directly correlate to the applicant's physical presence 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 relocates with the applicant abroad based on the denial of the applicant's waiver request. With respect to the applicant's step-daughter, this criteria has not been addressed. As for the applicant's spouse, although counsel notes that the applicant's spouse is unfamiliar with the country and its customs and would be unable to obtain appropriate medical care and coverage in Colombia, 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).

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/or step-daughter 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/or step-daughter would suffer extreme hardship were they to relocate abroad based on the applicant's inadmissibility. The record demonstrates that the applicant's U.S. citizen spouse and/or step-daughter face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse/step-parent is removed from

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(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.