

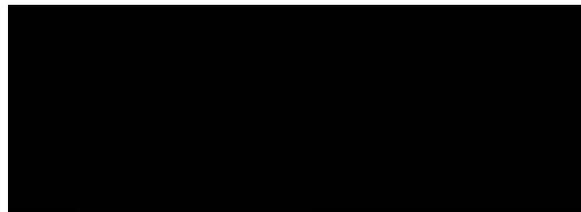
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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FIL [REDACTED] Office: MEXICO CITY (PANAMA CITY) Date: MAR 31 2009

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved. The matter will be returned to the district director for continued processing.

The applicant, a native and citizen of Ecuador, was found 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 attempted to procure an immigration benefit by fraud, under 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 more than one year and 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.<sup>1</sup> The applicant sought waivers of inadmissibility pursuant to sections 212(i) of the Act, 8 U.S.C. § 1182(i), 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and 212(h) of the Act, 8 U.S.C. § 1182(h), in order to be able to return to the United States to reside with her U.S. citizen spouse and children, born in 2000 and 2002.

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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated March 9, 2006.

In support of the appeal, the applicant submitted the Form I-290B, Notice of Appeal (Form I-290B) and a notarized letter from her U.S. citizen spouse, dated April 8, 2006. In addition, on May 5, 2006, the applicant's spouse submitted an additional letter and medical documentation pertaining to him and one of the children, [REDACTED]. The entire record was reviewed and considered in rendering this decision.

**A. INADMISSIBILITY BASED ON MISREPRESENTATION UNDER  
SECTION 212(a)(6)(C)(i) OF THE ACT**

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.

. . . .

(iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

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<sup>1</sup> The AAO notes that the applicant does not contest the district director's findings of inadmissibility.

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

The record establishes that in August 2000, the applicant was convicted in the United States District Court for the Northern District of New York for the offense of Bribery of Public Officials, a violation of 18 U.S.C. §201(b)(1)(A). Said conviction was based on extensive documentation that established that the applicant had offered cash to an employee of the United States Department of Justice, Immigration and Naturalization Service [now the United States Department of Homeland Security- U.S. Citizenship and Immigration Services (USCIS)], a public official, with the intent to influence an official act, that is the classification of the applicant by the USCIS as a Permanent Resident Alien, when the applicant was not entitled to such status. Specifically, the applicant bribed an undercover USCIS agent for the purpose of being processed for an illegal Form I-551, Alien Registration Card. The applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, for having attempted to procure an immigration benefit by fraud. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse.

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include 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.

Section 212(a)(6)(C)(i) of the Act provides that a waiver under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's spouse, a U.S. citizen, is the only qualifying relative, and hardship to the applicant and/or their children cannot be considered, except as it may affect the applicant's spouse.

The applicant's U.S. citizen spouse contends that he is suffering extreme emotional, physical, psychological and financial hardship due to the applicant's inadmissibility. In a declaration he states that he is suffering emotional hardship due to the close relationship he has with his wife and children, who are residing in Ecuador. Moreover, in light of the traumatic experiences he and his family encountered in Ecuador, as further discussed below, the applicant's spouse contends that he is suffering emotional, physical and psychological hardship due to the constant safety concerns he has for his wife and children. He also asserts that he is suffering financial hardship because his business is in its early stages, and he has the responsibility to maintain two households, as the applicant is caring for their young children. *Affidavit of* [REDACTED], dated May 16, 2005.

Specifically, the applicant's spouse asserts that as he was leaving the airport in Qualiqual, Ecuador on December 22, 2004 with the applicant and their children, their vehicle was pulled over by men in police uniforms. These men proceeded to pull out pistols and automatic weapons and rob the applicant's spouse and family. At one point, one of the individuals held a gun to the applicant's spouse's head and beat him with the gun handle, causing bruises and lacerations to his face as well as kicking him on the knee. In addition to beating and robbing the applicant's spouse, the perpetrators took down the applicant's spouse's information and threatened to hunt down and kill the family if he went to the police to report the incident. *Id.* at 2. Medical documentation in support of the applicant's spouse's injury while in Ecuador has been provided.

In addition to the above incident, the applicant's U.S. citizen child, [REDACTED], was struck by a car in January 2005 in Ecuador. Due to this incident, the child received medical treatment and surgery due to trauma in the skull and in his right foot, which was fractured; [REDACTED] two months to recover and continues to receive rehabilitation. *Letter and Translation from* [REDACTED], dated May 17, 2005. He requires a lipectomy, correction of scars plus radiotherapy. *Letter from* [REDACTED] dated April 20, 2006.

Due to the traumatic experiences suffered by the applicant's spouse and his family while in Ecuador and the emotional, physical and psychological effects of said experiences on the applicant's spouse's psyche and well-being, the AAO concludes that the applicant's spouse would suffer extreme hardship were he to remain in the United States while his family resides abroad. The fears and anxieties he would encounter due to their residence abroad would cause hardship beyond the norm.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. In addition to the traumatic experiences encountered by the applicant's spouse and family, as referenced above, the AAO notes that the U.S. Department of State references the following regarding country conditions in Ecuador:

Crime is a serious problem in Ecuador, and visitors should be alert and cautious. Non-violent crime is common: hundreds of Americans are robbed every year in Ecuador. Violent crime has increased in recent

years. Thieves and small gangs armed with guns or knives are now sometimes active even in smaller cities such as Otavalo, Manta, and Cuenca. Tourists have been robbed at gunpoint on beaches and along hiking trails, including on the well-populated trail to the summit of Pichincha Volcano in Quito. Incidents of rape have increased, even in well-traveled tourists areas and when the victims traveled in groups for safety. Shootings, kidnappings, and carjackings are still relatively rare, but American citizens have been victimized by those crimes.

*Country Specific Information-Ecuador, U.S. Department of State, dated November 5, 2008.*

Based on the applicant's spouse's and family's traumatic experiences while in Ecuador and the emotional, physical and psychological ramifications, as described by the applicant's spouse, the AAO finds that the applicant's U.S. citizen spouse would experience extreme hardship were he to relocate to Ecuador to reside with the applicant.

**B. INADMISSIBILITY BASED ON UNLAWFUL PRESENCE UNDER  
SECTION 212(A)(9)(B)(i)(II) OF THE ACT**

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

(B) Aliens Unlawfully Present.-

(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 the Secretary of 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 record indicates that the applicant entered the United States in November 1994 without inspection. She did not depart the United States until September 2003. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until her departure in September 2003. The applicant was thus found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, for having been unlawfully present in the United States for more than one year. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

As the AAO has already determined that extreme hardship has been established with respect to the applicant's U.S. citizen spouse in relation to a waiver of inadmissibility under section 212(a)(6)(C)(i) of the Act, for having attempted to procure an immigration benefit by fraud, the AAO concludes that the applicant is also eligible for a waiver under Section 212(a)(9)(B)(V) of the Act, for unlawful presence.

**C. INADMISSIBILITY BASED ON CONVICTION FOR CRIME INVOLVING MORAL TURPITUDE  
UNDER SECTION 212(a)(2)(A)(i)(I) OF THE ACT**

As noted above, the record establishes that in August 2000, the applicant was convicted in the United States District Court for the Northern District of New York for the offense of Bribery of Public Officials, a violation of 18 U.S.C. §201(b)(1)(A). The applicant was sentenced to probation for a five year period. The district director concluded that the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of Act, for having been convicted of a crime involving moral turpitude

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 . . . 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) . . . 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 . . . .

As the AAO has already determined that extreme hardship has been established with respect to the applicant's U.S. citizen spouse in relation to a waiver of inadmissibility under section 212(a)(6)(C)(i) of the Act, for having attempted to procure an immigration benefit by fraud, the AAO concludes that the applicant is also eligible for a waiver under Section 212(h) of the Act, for a crime of moral turpitude.

#### D. CONCLUSION

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Moreover, it has been established that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe.

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse and children would face if the applicant were to reside abroad, regardless of whether they relocate or remain in the United States, support letters, community ties, and the passage of more than eight years since the applicant's most recent immigration violation that led to a finding of inadmissibility. The unfavorable factors in this matter are the applicant's criminal conviction, entry without inspection, periods of unauthorized presence and employment in the United States and removal from the United States.

While the AAO does not condone the applicant's actions, the AAO finds that the favorable factors, in particular the extreme hardship imposed on the applicant's U.S. citizen spouse as a result of her inadmissibility, outweigh the unfavorable factors in this application. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i), 212(a)(9)(B)(v) and 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

**ORDER:** The appeal is sustained. The waiver application is approved. The district director shall continue to process the immigrant visa application accordingly.