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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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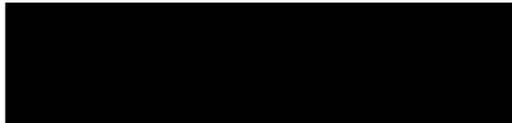
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IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the
Immigration and Nationality Act, 8 U.S.C. section 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, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Colombia. She was found to be inadmissible to the United States pursuant to 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 Crimes Involving Moral Turpitude (CIMT). The applicant is the wife of a naturalized U.S. citizen and states that she is the mother of two U.S. citizen children. 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.

The District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on November 24, 2004.¹

On appeal, counsel asserts that the applicant's excludability should be waived on the grounds of extreme hardship. He further asserts that the applicant's convictions are all over nine years old and that the applicant has three school age children who require her guidance and support.

Section 212(a)(2)(A) of the Act states in pertinent part:

(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 may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . 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 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 was convicted of Burglary, California Penal Code 459, on August 11, 1995, in the County of Los Angeles, California. The applicant was convicted of

¹ The AAO notes that the District Director's decision incorrectly identified the applicant's gender and may have misstated the length of time she had resided in the United States. It does not, however, find these errors to have materially affected his analysis of the hardship factors in this matter or his ultimate decision.

Burglary, CPC § 459, on February 9, 1994, in the County of Los Angeles, California. The record reflects that the applicant was convicted of Grand Theft – Property, CPC § 487, on March 2, 1992, in the County of Los Angeles, California. The record indicates that the applicant was convicted of Theft of Property, CPC § 484(A), on July 29, 1992, in the County of Los Angeles, California. The District Director concluded that the applicant had been convicted of Crimes Involving Moral Turpitude (CIMT), and was inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I). The crime of Burglary with intent to commit theft is a CIMT. *Matter of Leyva*, 16 I. & N. Dec. 118 (BIA 1977)(discussing California Penal Code section 459). Offenses involving theft have long been held to constitute CIMTs. *Matter of Garcia*, 11 I. & N. Dec. 521 (BIA 1966). As such, the applicant has been convicted of four CIMTs.² The applicant does not contest these findings.

A waiver of inadmissibility under section 212(h) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse, parent or child of the applicant. Hardship to the applicant is not directly relevant to the determination of extreme hardship under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen spouse is the only qualifying relative. Although the applicant indicates that she has two U.S. citizen children, the record includes no birth certificates or other documentation to establish this relationship or the children's citizenship.³ If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted.

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 Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

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.

² The record indicates that the applicant was also arrested on February 9, 1994 and charged with Burglary. No disposition for this charge is found in the record. However, as the applicant is already inadmissible under section 212(a)(2)(i)(I) of the Act, the AAO does not find it necessary to determine whether the applicant's arrest for burglary resulted in a conviction.

³ The AAO notes that tax returns in the record indicate that the applicant has two children. However, this documentation, alone, is insufficient proof of parentage or citizenship.

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

The AAO notes that any evaluation of extreme hardship to a qualifying relative should discuss the impacts on that qualifying relative whether he or she relocates with the applicant or remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record includes, but is not limited to, statements from friends and acquaintances of the applicant attesting to her moral character; a birth certificate for the applicant; tax documentation and employment verification statements for the applicant and her spouse; a copy of an insurance policy for the applicant and her spouse; and court records pertaining to the applicant's convictions.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Counsel for the applicant asserts that United States Citizenship and Immigration Services (USCIS) is required to grant the applicant a hearing to determine if her children will suffer extreme hardship and cites to *Luna v. INS*, 709 F.2d 126 (1st Cir. 1983). However, counsel's reliance on *Luna* and a number of cancellation of removal proceedings in support of this assertion, as well as others, is misplaced. While cancellation of removal proceedings are informative in establishing the criteria for determining extreme hardship, they are subject to distinct regulations and are procedurally different from inadmissibility proceedings under section 212(h) of the Act. The cases cited are related to the requirements for cancellation of removal proceedings and therefore do not apply in this matter. More specifically, USCIS has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. See 8 C.F.R. § 103.3(b). In this instance, counsel has identified no unique factors or issues of law to be resolved. The AAO finds the written record of proceedings to fully represent the facts and issues in this matter. Consequently, the request for an oral argument or hearing is denied.

Counsel states that the District Director failed to consider all of the hardship factors in the aggregate, asserting that separation from community, separation from family, economic loss to the applicant, loss of job opportunities to the applicant, and harm and inconvenience to the applicant's children, all converge to establish extreme hardship in this case. As noted above, hardship to the applicant is not directly relevant in a 212(h) extreme hardship determination, and as such counsel's reliance on cancellation of removal proceedings do not apply in the manner they have been cited. The District Director found that the applicant had failed to submit evidence in support of her hardship claim. The AAO also notes that, with the exception of a short statement from the applicant submitted with the Form I-601, the specific hardship factors referred to by counsel were not articulated, nor supported by evidence in the record, at the time the District Director considered the applicant's waiver application. The hardship factors that counsel asserts were ignored by the District Director are raised on appeal.

Counsel states that if the applicant is removed, it would be difficult for her spouse to care for her children properly since he is employed full-time. Counsel further asserts that, since the applicant's children are from a prior relationship and her spouse has not adopted them, there would be no adult

in the United States with any legal duty to support them were she to be removed. The AAO acknowledges counsel's claims, but notes that the record fails to support them. While the record documents that the applicant's spouse is employed, it offers no similar proof that he would find it difficult or be unable to provide appropriate supervision and care for her children in her absence. Neither does it provide documentary evidence that establishes that the applicant's spouse would not be legally responsible for the support of his stepchildren under Florida law. The assertions of counsel alone are not sufficient to meet the applicant's burden of proof in this proceeding. *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). Moreover, as previously noted, the record does not contain the documentation necessary to establish that the applicant is the mother of two United States citizen children. Accordingly, the applicant's claimed children will not be considered qualifying relatives for the purposes of this proceeding. To establish hardship to the applicant's spouse, the record offers only counsel's general and unsupported assertion that he would experience difficulty in caring for his stepchildren because he is employed full-time. Accordingly, the AAO finds that the record fails to demonstrate that the applicant's spouse would experience extreme hardship if the applicant is excluded and he continues to reside in the United States.

Extreme hardship must also be established if a qualifying relative relocates with an applicant. On appeal, counsel asserts that the applicant's children's first language is English and that Colombia does not have laws and effective educational programs designed to integrate speakers of foreign languages into its elementary and secondary schools. He also states that, as the applicant has lived in the United States for 13 years, she would have no prospects for employment in Colombia and would be unable to support herself, much less her children. The AAO notes counsel's claims regarding the hardship that would be experienced by the applicant's children upon relocation to Colombia. However, as just indicated, the applicant's children are not established by the record as qualifying relatives and, therefore, hardship to them will not be considered. The AAO also observes that, even if the applicant's children were found to be qualifying relatives, the record fails to support counsel's claims of hardship with documentary evidence, e.g., country conditions materials on the economy, employment and schools in Colombia. The record does not address hardship to the applicant's spouse upon relocation. Therefore, the AAO finds that the record fails to establish that the applicant's spouse would experience extreme hardship if he moved to Colombia with the applicant.

U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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. In that the record does not distinguish the hardship that would be suffered by the applicant's spouse from that normally associated with removal or exclusion, the applicant has failed to establish extreme hardship to a qualifying relative under section 212(h) of the Act. 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. Here, the applicant has/has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.