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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: MIAMI, FL

Date:

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IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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, 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. The matter 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 the Colombia who has been 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 (CIMT). The record indicates that the applicant has a U.S. citizen wife and four U.S. citizen stepchildren. He seeks a waiver of inadmissibility in order to reside with his family in the United States.

The district director concluded that the applicant had failed to establish extreme hardship to a qualifying relative. She denied the waiver application on March 30, 2007.

On appeal the applicant's spouse states that she would be unable to obtain comparable employment in Colombia and could not move her children to Colombia.

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) states 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)(A) [I]t is established to the satisfaction of the Attorney General that-

(i) [T]he 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

(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 Petit Larceny, § 812.014.3a of the Florida Statutes, on December 22, 1996, in the 11th Circuit Court, Miami-Dade County, Florida; and Aggravated Assault, § 784.021 of the Florida Statutes, on August 31, 2001, in the 17th Circuit Court, Ft. Lauderdale, Florida. The district director concluded that these offenses constitute crimes involving moral turpitude and render the applicant inadmissible to the United States. The applicant has failed to provide the final disposition for an arrest for Petit Larceny on April 18, 2000.

Larceny has long been held to be a CIMT. *Matter of Garcia*, 11 I. & N. Dec. 521 (BIA 1966); *Matter of V-*, 2 I. & N. Dec. 340 (BIA 1940) and *Matter of V- I-*, 3 I. & N. Dec. 571 (BIA 1949)(concluding that petit larceny was a CIMT). Aggravated Assault is a CIMT. *Matter of Chavez-Calderon* I.D. 3212 (BIA 1993). Thus the applicant has been convicted of two Crimes of Moral Turpitude, and is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I). 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 spouse and stepchildren are the qualifying relatives in this matter. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act; *see also Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

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 provides a list of factors relevant in 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.

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

The AAO notes that extreme hardship to the applicant's wife or stepchildren must be established whether they reside in Colombia or the United States, as they are not required to reside outside the United States based on the denial of the applicant's waiver request.

The record contains the following relevant evidence: statements from the applicant's wife; a marriage certificate for the applicant and his wife; court records for the applicant; and financial documentation for the applicant's spouse.

The applicant's spouse has asserted that the applicant helps take care of her children, that her children would suffer emotionally if the applicant were removed, and that she cares for her husband deeply and cannot bear to think of living without him. While the AAO acknowledges the emotional bonds that connect the applicant to his family. There is no documentary evidence that the emotional hardship his spouse and children will suffer upon the applicant's exclusion rises above that normally experienced by the relatives of excluded aliens. *See Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996)(holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute an extreme hardship). Accordingly, the applicant has not established that his wife and/or his stepchildren would suffer extreme hardship if they remained in the United States following his removal.

The applicant's spouse also asserts that she is a registered nurse and would not make a liveable wage in Colombia, and that she could not uproot her children from the United States where they have spent their entire lives. The applicant's spouse also states that, if they relocated to Colombia, her children would be separated from their biological father, who still plays a major role in their lives. The applicant's spouse further contends that Colombia would not be a safe environment for her children, noting that the applicant's oldest son was shot and killed in Colombia on March 20, 2009, and that he is the second of the applicant's family to be murdered.

The AAO notes that the Board of Immigration Appeals (BIA) has previously found that a 15-year-old child who had lived her entire life in the United States, was completely integrated into the American lifestyle and was not fluent in Chinese would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The BIA concluded that uprooting the child at her stage of education and social development and to require her to survive in a Chinese-only environment would be such a significant disruption that it would constitute extreme hardship. The BIA, having found extreme hardship to be established for the 15-year-old determined it unnecessary to consider whether relocation to Taiwan would also constitute extreme hardship for her younger siblings.

In the present matter, the record indicates that the youngest of the applicant's stepchildren are 15 and 16 years of age and like the child in *Matter of Kao and Lin*, have lived their entire lives in the United

States. Relying on the BIA's reasoning in *Matter of Kao and Lin*, the AAO concludes that relocation to Colombia would create a similar disruption in the lives of these children and, therefore, constitute an extreme hardship for them. The AAO also notes that on March 25, 2009, the Department of State extended its travel warning for Colombia, reporting that "the potential for violence by terrorists and other criminal elements exists in all parts of the country." Accordingly, the AAO finds that the applicant has established that a qualifying relative would suffer extreme hardship if his family relocated to Colombia.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's spouse or stepchildren would face extreme hardship if he is refused admission. The AAO recognizes that the applicant's spouse and stepchildren will experience hardships as a result of the applicant's inadmissibility. However, record does not distinguish these hardships from those commonly associated with removal, and they do not, therefore, rise to the level of "extreme" as informed by relevant precedent. 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. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse or stepchildren as required under section 212(h) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(2)(A) 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.