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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**

H₂

FILE: [REDACTED]

Office: PROVIDENCE, RI

Date:

JUN 02 2010

IN RE: [REDACTED]

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Providence, Rhode Island. 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. He was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II) for having been convicted of a crime involving a controlled substance. The applicant is the spouse of a naturalized U.S. citizen. 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 his admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on July 18, 2007.

On appeal, counsel states the applicant has established that his spouse will suffer extreme hardship.

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

- (1) Criminal and related grounds. —
 - (A) Conviction of certain crimes. —
 - (i) In general. — Except as provided in clause (ii), any 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
 - (II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), 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 Possession of Marijuana, § 21-28-4.01(C)(1)(b) Rhode Island General Laws, [REDACTED] on June 3, 2004.¹ Thus the applicant has been convicted of a crime involving a controlled substance, and is inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II). The applicant does not contest this finding. The applicant has also been convicted of a Crime Involving Moral Turpitude (CIMT). However, as the conviction qualifies for the petty offense exception, he is not inadmissible on this additional basis.²

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 only qualifying relative identified in the record is the applicant's U.S. citizen spouse.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

¹ An applicant convicted of a crime involving a controlled substance is only eligible for a waiver of this inadmissibility if the conviction is for an amount of marijuana below 30 grams. In this case, § 21-28-2.08 of the Rhode Island General Laws defines a misdemeanor possession of marijuana as less than one kilogram, or 100 grams. The court records do not indicate the specific amount the applicant was convicted of possessing, but the arrest report indicates an amount having a value of \$20. According to a 2003 National Drug Intelligence Center report, \$20 of marijuana in the state of Rhode Island represents an amount equivalent to 1 gram. As the District Director considered the applicant eligible to file an application for waiver of inadmissibility for this conviction, the AAO finds it reasonable to do the same.

² On October 29, 2002, the applicant was convicted of Receiving Stolen Goods, less than \$500, § 11-41-2 of Rhode Island General Laws, in the District Court of Rhode Island, and was given one year of probation. The crime is punishable by not more than one year imprisonment, and in this case the applicant was not sentenced to any period of imprisonment. As such, the conviction qualifies for the petty offense exception at § 212(a)(2)(A)(ii)(II) of the Act.

³ The record indicates that the applicant's parents may reside in the United States. However, it does not establish that they are U.S. citizens or lawful permanent residents. As such, it cannot be determined that they are qualifying relatives for the purposes of this proceeding.

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 a qualifying relative must be established 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 of proceeding contains documentation submitted with the applicant's Form I-130. With respect to the applicant's waiver application the record also contains, but is not limited to: a brief from counsel; statements from the applicant's spouse; an employment letter for the applicant's spouse; a 2005 tax return and W-2 forms for the applicant and his spouse; a copy of the marriage certificate for the applicant and his spouse; a statement from the applicant; and country conditions materials on Colombia, including copies of the section on Colombia from the U.S. State Department's Country Reports on Human Rights Practices – 2005, and the section on Colombia from Amnesty International's 2006 report.

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

Counsel asserts on appeal that the applicant's situation is unusual in that the family has resided in the United States for such a long period of time, with no remaining ties in their home country and with conditions in his country of origin being unfavorable. She also asserts that the applicant's removal would have an impact on his and his spouse's ability to have children together, that his removal would preclude financial, physical and emotional support for any children they might have, and that it would be difficult for their marriage to survive. Counsel further asserts that the applicant's spouse would be devastated out of concern for the applicant's economic well-being in Colombia, and that she would experience emotional, psychological and economic anguish. Finally, she asserts that these factors should be considered in the aggregate, and that they would result extreme hardship for the applicant's spouse if the applicant were to be removed.

The applicant's spouse submits a statement asserting that her dreams for her and the applicant's future together would be shattered if the applicant's waiver request is denied, including that of having children together, and that separation might lead to their marriage's end.

Although the AAO notes the claims made by counsel and the applicant's spouse, it does not find the record to support them. The record does not contain any documentary evidence that the applicant's spouse has incurred substantial debt, is unable to work or has children who will be dependent on her

for support. The AAO also notes that the applicant's spouse resides with the applicant's parents, further mitigating any economic impact on her due to his inadmissibility. The record also contains no documentation that establishes how separation will affect the applicant's spouse's emotional/mental health. Neither does it demonstrate that the applicant's spouse has any medical conditions that would result in hardship for her in the applicant's absence. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. 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). Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *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)). Accordingly, the record does not establish that, individually or in the aggregate, the applicant's spouse will experience impacts that rise to the level of extreme hardship if the applicant's waiver request is denied and she remains in the United States.

As noted above extreme hardship should include a consideration of the impacts of relocation on the applicant's qualifying relative. In this case, counsel has asserted that the applicant has no family ties in Colombia and that their children would live in constant fear due to the violent conditions in Colombia, that the applicant has resided in the United States for a significant period of time, and that neither the applicant nor his spouse would be able to find employment in Colombia. The applicant and his spouse have submitted statements asserting that they would be unable to find employment in Colombia, would fear the violent conditions in the country, and would have no family or relatives to support them.

The AAO notes that, on March 5, 2010, the U.S. State Department issued a travel warning for Colombia due to the threat of violence in all parts of the country. When country conditions in Colombia are considered in the aggregate with the normal hardships that result from relocation, the AAO finds the applicant to have established that his spouse would experience extreme hardship if she relocated to Colombia. However, as the applicant has also failed to demonstrate extreme hardship to his spouse if she remains in the United States, he has not established that a qualifying relative would suffer extreme hardship for the purposes of section 212(h) of the Act.

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 the present case, the record fails to distinguish the hardship that would be experienced by the applicant's spouse from that suffered by other individuals whose spouses have been found to be inadmissible to the United States. 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(h) of the Act, the burden of proving eligibility rests with the applicant. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.