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U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy.

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [Redacted]

Office: Miami

Date: 15 AUG 2002

IN RE: Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(g) and (h) of the Immigration and Nationality Act, 8 U.S.C. 1182(g) and (h)

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Miami, Florida, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Haiti who seeks to adjust her status to that of lawful permanent resident under section 902 of the Haitian Refugee Immigrant Fairness Act of 1998, Pub.L. 105-277 (HRIFA). She was found to be inadmissible to the United States under sections 212(a)(1)(A)(i) and 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 being afflicted with a communicable disease of public health significance, namely human immunodeficiency virus (HIV), and for having been convicted of a crime involving moral turpitude.

The applicant married [REDACTED] a native of Haiti and naturalized U.S. citizen, in October 1995 and became the beneficiary of an approved Petition for Alien Relative on March 19, 1997. Her application for adjustment of status was approved on March 10, 1997, and she was granted conditional permanent resident status to expire on March 10, 1999. It is noted that there was no reference to her conviction on her Form I-485 application. The applicant filed a Petition to Remove the conditions on Residence on January 13, 1999. The applicant states that she let her status as a conditional permanent resident expire. The applicant lists no names as former or present husbands on her Form G-325A dated March 23, 2000.

A sheriff's report dated February 14, 2000, from Broward County, Florida revealed a felony record for the applicant. A sheriff's report dated August 6, 2001, from Broward County, Florida, revealed no record for the applicant. The record reflects that the applicant was convicted of battery of a person over 65 years of age on July 8, 1994. Imposition of sentence was withheld and she was placed on probation for 18 months.

The applicant seeks a waiver of this permanent bar to admission as provided under section 212(h) of the Act, 8 U.S.C. 1182(h), to reside with her children in the United States.

The district director concluded that the applicant had failed to establish that she had any qualifying relatives in order to be eligible for the benefit and denied the application accordingly.

On appeal, the applicant submits the birth certificates of her three children born in the United States in April 1997, August 1998 and January 2000 respectively. The applicant states that the children's father, [REDACTED] lives in Haiti, he has a valid American visa, comes to the United States every now and then and that is why he is able to father the children. This assertion is partially unsupported in the record. The applicant states that, even though the father lives in Haiti, her children's lives would be pure hell if they had to return to Haiti. The applicant, in

referring to Mr. [REDACTED], states that her husband is of very modest means and could not support all of them in that country. The record is devoid of evidence of the termination of the applicant's marriage to [REDACTED] or any marriage to [REDACTED]

Section 212(a)(1)(A) of the Act provides, in part, that any alien-

(i) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance, which shall include infection with the etiologic agent for acquired immune deficiency syndrome, ...is inadmissible

Section 212(g)(1) of the Act provides that: The Attorney General may waive the application of subsection (a)(1)(A)(i) in the case of any alien who-

(A) is the spouse or the unmarried son or daughter, or the minor unmarried lawfully adopted child, of a United States citizen, or of an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa, or

(B) has a son or daughter who is a United States citizen, or an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa....

Service instructions provide that an applicant who is inadmissible under section 212(a)(1)(A)(i) of the Act because of HIV Infection must demonstrate the following criteria will be met if a waiver is to be approved.

(a) the danger to the public health of the United States created by the alien's admission is minimal;

(b) the possibility of the spread of the infection created by the applicant's admission is minimal; and

(c) there will be no cost incurred by any level of government agency of the United States without prior consent of that agency.

Documentation in the record as late as August 27, 2001, establishes that the applicant can obtain any required medications from the Broward County Health Department, through Ryan White funding. The record reflects that the applicant has now satisfied the above requirements of section 212(g)(1) of the Act.

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

(A)(i) 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,...is inadmissible.

Section 212(h) of the Act provides that: The Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I),...or subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if-

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i)...the 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;...and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or for adjustment of status...No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

Here, fewer than 15 years have elapsed since the applicant committed her last violation. Therefore, she is ineligible for the waiver provided by section 212(h)(1)(A) of the Act.

Nothing could be clearer than Congress' desire in recent years to limit, rather than extend, the relief available to aliens who have committed crimes involving moral turpitude. In addition to the

Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub L. 104-208, 110 Stat. 3009, this intent was recently seen in the provisions of the Antiterrorism and Effective Death Penalty Act of 1996, Pub.L. No. 104-132, 110 Stat. 1214, which relates to criminal aliens. Congress has almost unfettered power to decide which aliens may come to and remain in this country. This power has been recognized repeatedly by the Supreme Court. See Fiallo v. Bell, 430 U.S. 787 (1977); Reno v. Flores, 507 U.S. 292 (1993); Kleindienst v. Mandel, 408 U.S. 753, 766 (1972). See also Matter of Yeung, 21 I&N Dec. 610, 612 (BIA 1997).

Section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission resulting from inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The key term in the provision is "extreme." Therefore, only in cases of great actual or prospective injury to the qualifying relative(s) will the bar be removed. Common results of the bar, such as separation or financial difficulties, in themselves, are insufficient to warrant approval of an application unless combined with much more extreme impacts. Matter of Ngai, 19 I&N Dec. 245 (Comm. 1984). "Extreme hardship" to an alien himself cannot be considered in determining eligibility for a section 212(h) waiver of inadmissibility. Matter of Shaughnessy, 12 I&N Dec. 810 (BIA 1968).

A review of the documentation in the record, when considered in its totality, fails to establish the existence of hardship over and above the normal economic and social disruptions involved in the removal of a family member back to the country where the "alleged spouse" and children's father lives that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to remain in the United States. In the present matter, it appears that the family will be reunited rather than be separated. It is concluded that the applicant has not established the qualifying degree of hardship in this matter.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Attorney General and pursuant to such terms, conditions, and procedures as he may by regulations prescribe. Since the applicant has failed to establish the existence of extreme hardship, no purpose would be served in discussing a favorable exercise of discretion at this time.

Section 291 of the Act, 8 U.S.C. 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.