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FILE:



Office: LOS ANGELES, CA

Date: NOV 21 2005

IN RE:



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:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Acting District Director, Los Angeles, CA denied the waiver application and the Administrative Appeals Office (AAO) in Washington, DC dismissed the appeal. The matter is now before the AAO on motion to reopen. The motion will be granted and the previous decisions affirmed.

The applicant is a native and citizen of El Salvador who was 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 committed a crime involving moral turpitude (CIMT). The applicant is the child of a U.S. citizen and parent of four U.S. citizens. She seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with her U.S. citizen children and mother.

Counsel submitted the motion to reopen because it appeared from the previous decision issued by the AAO that certain supporting documents submitted with the appeal, particularly a letter from a psychologist evaluating the potential effects of the applicant's removal on her family, were not part of the record reviewed by the AAO. Since the letter from the psychologist was not available when the initial decision was made and since the letter is relevant to this matter, the motion is granted.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on her mother and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, February 11, 2003.

On appeal, counsel contended that the applicant's former attorney had failed to submit evidence in support of her claim, including a psychological evaluation of the applicant's mother and U.S. citizen children. Counsel indicated that such documentation would be forthcoming and would demonstrate extreme hardship. The AAO in its initial decision found that extreme hardship was not established and dismissed the appeal.

The entire record, including the letter from the psychologist, will be considered in rendering this decision.

The record indicates that the applicant was convicted of Theft of Property on December 8, 1992, placed on summary probation for 12 months and served 10 days in Los Angeles County Jail. On April 12, 1995, the applicant was convicted of Petty Theft with Prior Jail Term and False Representation of Identity to a Peace Officer. She was sentenced to three years formal probation and served 120 days in Los Angeles County Jail.

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

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.

Larceny crimes have long been held to be CIMTs. *Matter of Garcia*, 11 I&N 521 (BIA 1966). See also, *Matter of V-I*, 3 I&N Dec. 571 (BIA 1949) (conviction of petty theft in California a CIMT). The applicant is thus inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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

The Attorney General [now, Secretary, Homeland Security] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if—

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- (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 [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.

A section 212(h) waiver is dependent first upon a showing that the applicant's removal imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Any hardship suffered by the applicant is irrelevant to the proceedings. If extreme hardship is established, it is but one favorable factor to be considered in the determination as to whether the Secretary should exercise the discretion to grant the waiver. See *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 set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. 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.

It has been held that "the family and relationship between family members is of paramount importance" and that "separation of family members from one another is a serious matter requiring close and careful scrutiny. *Cerrillo-Perez v. INS*, 809 f.2d 1419, 1423 (9th Cir. 1987) citing *Bastidas v. INS*, 609 F.2d 101 (3rd Cir. 1979). However, U.S. court decisions have also held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation.

The record indicates that the applicant and her husband have lived together for 17 years and have been married for four years. There is no information in the record to indicate whether her husband has legal status in the United States. The record indicates that he was born in Guatemala and would stay in the United States

if the applicant were removed. *Letter of Ana Nogales, Psychologist, May 3, 2003.* Since no claim has been made concerning the applicant's husband, any hardship that he might face will not be considered.

The applicant's mother has been in the United States since 1976 and is a United States citizen. She is being treated for high blood pressure. She experiences symptoms of depression, irritability, mood swings, crying spells and fearfulness when she thinks about her daughter and grandchildren leaving the United States and living in El Salvador. She fears that her daughter and grandchildren may be subjected to kidnapping, rape and murder in El Salvador. She also believes that her daughter and grandchildren would suffer emotionally and her children would be limited academically. *See Letter of Ana Nogales. See also, Letter of Yolanda Iraheta, May 19, 2000.*

The applicant and her husband have four U.S. citizen children. [REDACTED] was born in 1988 [REDACTED] in 1991, [REDACTED] in 2001 and [REDACTED] in 2002. If the children remain in the United States and are thus separated from their mother, they would face the possibility of anxiety separation, depression, fears of rejection and/or abandonment and difficulty in establishing healthy relationships in adulthood. The older children, [REDACTED] and [REDACTED] have excelled academically in the United States, but they are not proficient in Spanish and would not have the same academic opportunities in El Salvador as they do in the United States. *Letter of Ana Nogales, Pages 8-9.*

While the information presented establishes that the applicant's removal would result in hardship to her mother and children, it does not indicate that the hardship would be extreme. Nothing in the record indicates hardship that is "unusual or beyond that which would normally be expected upon deportation." The older children, given their lack of Spanish language proficiency, would have an extremely difficult time adjusting to life in El Salvador, but, as U.S. citizens, they are not required to leave the United States. Their father and grandmother would still be living in the United States after the applicant's removal. While the psychologist has indicated that separation from a mother can cause serious emotional and psychological difficulties for children in general, she has not identified specific evidence indicating that such problems are likely with these children. The problems the children face are not beyond those that could ordinarily be expected when one family member is removed from the country. It appears that the children have the option of staying in the United States with their father and grandmother.

The applicant's mother would also suffer hardship if she is separated from her daughter, but the record does not indicate that her physical problem and emotional difficulties are such that her daughter's removal would make it impossible for her to carry out her daily life duties and tasks. There is no medical evidence linking her high blood pressure with her daughter's removal. There is no evidence that the emotional difficulties caused by separation from her daughter would cause her to be unable to function. The record does not indicate that any hardship the applicant's mother faces is extreme.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that her U.S. citizen children or mother would suffer extreme hardship if she were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the previous decisions are affirmed.

ORDER: The motion to reopen is granted. The previous decisions are affirmed.