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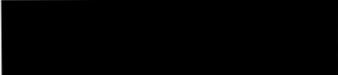
U.S. Citizenship
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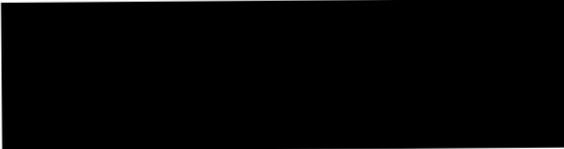
IN RE:

SUPAYA VALLARDES

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Baltimore, Maryland, denied the waiver application and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 been convicted of a crime involving moral turpitude. The applicant is the spouse of a lawful permanent resident and the mother of a lawful permanent resident daughter. 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 spouse and daughter.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated February 19, 2004.

The record reflects that, on May 1, 1997, the applicant was placed on probation before judgment for the crime of theft under \$300. The applicant received one year of probation. On the same day, the applicant was found not guilty of trespassing.

On April 23, 2001, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485), based on her husband's approved Petition for Immigrant Worker (Form I-140). On December 26, 2003, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, counsel asserts that the district director erred in finding that the cumulative hardships the applicant's family members would suffer did not impose an extreme hardship upon them. *See Applicant's Brief*, dated June 10, 2004. In support of the appeal, counsel submitted the above-referenced brief, medical documentation in regard to the applicant's daughter and a psychological report for the applicant's spouse and daughter. The entire record was reviewed and considered in rendering a decision on the appeal.

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 . . . is inadmissible.

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

Waiver of subsection (a)(2)(A)(i)(I) . . .

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I).

.. 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 district director based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's conviction for theft. Counsel does not contest the district director's finding of inadmissibility.

Hardship to the alien herself is not a permissible consideration under the statute. A section 212(h) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse, parent, son or daughter of the applicant.

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 at 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. The BIA has held:

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).

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The record reflects that the applicant's spouse [REDACTED] and daughter [REDACTED] are natives and citizens of El Salvador who became lawful permanent residents of the United States [REDACTED]

in 2003. [REDACTED] and the applicant have resided in the United States since 1986 and filed Applications for Asylum or Withholding of Removal (Form I-589) in 1990 which have never been adjudicated. [REDACTED] has a six-year old daughter who is a U.S. citizen by birth. [REDACTED] is a single parent and resides with the applicant and [REDACTED]. The record reflects further that the applicant and [REDACTED] are in their 40's, [REDACTED] is in her 20's and [REDACTED] and [REDACTED] both have some health concerns.

Counsel contends that [REDACTED] would suffer extreme hardship if the applicant is removed from the United States. [REDACTED] has no marketable job skills and has limited his work due to the negative impact that the denial of the applicant's waiver has had upon his emotional and physical health. The record reflects that the applicant is employed as a notary public. [REDACTED] has been diagnosed with Post Traumatic Stress Disorder (PTSD) resulting from his experiences in the military in El Salvador. [REDACTED] psychological problems have physically manifested themselves to such an extent as to cause him to lighten his work schedule. Counsel submitted a psychological report for the applicant's spouse indicating that [REDACTED] suffers from PTSD and has recurrent nightmares and physiological symptoms which have been exacerbated by the denial of the applicant's waiver. The psychological report indicates that [REDACTED] PTSD symptoms would be further exacerbated if the applicant were removed from the United States. [REDACTED] in his original affidavit, indicated that he would be unable to return to El Salvador because of his past experiences in the military. The psychological report indicates that [REDACTED] would suffer severe clinical depression if he returned to El Salvador due to the effect of returning to the country in which he was subjected to the trauma, which caused his PTSD. There is no documentation of country conditions on the record.

The couple's prospects for adequate employment in El Salvador are somewhat dim. If he remained in the United States [REDACTED] would face trying to maintain alone a household and assisting his single parent daughter and grandchild, as well as trying to combat his own physical and psychological problems. It would be extremely difficult for [REDACTED] to mitigate the effects of separation by visiting the applicant, due to the cost in relation to any income he may be able to generate and the psychological harm to which he would be exposed due to returning to the country in which he suffered the trauma, which led to his PTSD. In El Salvador, [REDACTED] significant mental health condition would most likely suffer, and it is probable that [REDACTED] would be unable to receive adequate care. In El Salvador, where wages are generally lower and the unemployment rate is high, the applicant and her family could be reduced to poverty, compounded by [REDACTED] mental health. The economic hardship [REDACTED] faces is not uncommon to alien and families upon deportation. However, the hardship [REDACTED] faces is substantially greater than that which aliens and families upon deportation would normally face when combined with his history of PTSD. A finding of extreme psychological hardship is the inevitable conclusion of the combined force of the submitted affidavits and psychological report. A discounting of the extreme hardship [REDACTED] would face in either the United States or El Salvador if his spouse were refused admission is, therefore, not appropriate. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors, cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. See *Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case is

the conviction for which the applicant seeks a waiver. The favorable and mitigating factors in the present case are the extreme hardship to the applicant's spouse if she were refused admission, the applicant's spouse and daughter's significant ties to the United States and the applicant's otherwise clear background.

The AAO finds that, although the immigration and penal code violations committed by the applicant are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.