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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: CHICAGO, ILLINOIS

Date: APR 23 2007

IN RE:

[REDACTED]

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:

[REDACTED]

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 waiver application was denied by the District Director, Chicago, Illinois. 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 Mexico who entered the United States without inspection or admission in 1988. The applicant is the beneficiary of an approved petition for alien relative; however, she was found to be inadmissible to the United States pursuant to § 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 applied for a waiver of inadmissibility in order to remain in the United States with her U.S. citizen mother and children, but the district director found that the applicant had failed to establish that her inadmissibility would cause her mother and children to suffer extreme hardship. The application was denied accordingly.

On the Notice of Appeal Form I-290B, counsel indicated that he would send a brief and/or additional evidence to the AAO within thirty days. As of this date, however, the AAO has received no further evidence; therefore, the record is complete. On appeal, counsel asserts that the district director's denial of the waiver application was an abuse of discretion and an error of law. Counsel contends that it is statutorily unnecessary to establish that the applicant's inadmissibility would cause extreme hardship to her qualifying relatives, and that the applicant only need show that she deserves discretionary relief. The AAO disagrees with counsel's interpretation of the law. The record contains affidavits and other documentation submitted with the original waiver application. The AAO has reviewed the entire body of evidence and finds that the applicant has not established the requisite extreme hardship to her qualifying relatives.

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.

On May 11, 1998, the applicant was convicted of theft and unauthorized control in the Cook County, Illinois Circuit Court. Counsel does not dispute that this crime renders the applicant 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 applicant committed the crime less than 15 years prior to her application for adjustment of status; hence, she is statutorily ineligible for a waiver pursuant to § 212(h)(1)(A) of the Act. She is however, eligible to apply for a waiver of inadmissibility pursuant to § 212(h)(B) of the Act. The language of § 212(h)(B) specifically states that the Secretary may, at his discretion, grant a waiver of inadmissibility if the applicant establishes that her inadmissibility would result in extreme hardship. In other words, extreme hardship must be shown prior to the weighing of any discretionary factors. Counsel's contention that the applicant is not required to establish extreme hardship in order to qualify for the waiver is incorrect.

The record includes a letter written by the applicant's father on February 24, 2001, in which he wrote that the applicant's mother was not working and was receiving disability checks due to the severity of her diabetes. The applicant's father wrote that the applicant and her children were living with him and the applicant's mother. In a March 16, 2001 letter written by Dr. [REDACTED] M.D., the applicant's mother's physician indicated that he felt the applicant's mother need the applicant to assist her with her medical care. Dr. [REDACTED] did not state what the applicant was required to do for her mother, or what would happen to the latter in her daughter's absence. In her letter dated March 24, 2001 the applicant's mother wrote that she depended on the applicant to take her to medical appointments and to keep up with household tasks. In her March 23, 2001 letter, the applicant stated that her three children would suffer extreme hardship if she were removed, because there is no one else to take care of them. The applicant did not address the possibility of her children and/or her mother's accompanying her to Mexico.

In her letter, the applicant also apologized for unknowingly receiving stolen merchandise. The applicant's brother affirmed, in a letter dated March 15, 2001, that the applicant was unaware that he was sending her stolen merchandise. The AAO notes that it has no authority to discount or excuse a criminal conviction based on an applicant's assertions regarding the nature of her involvement in the criminal activity.

The AAO acknowledges that the applicant's mother and children would suffer emotional hardship and practical difficulties as a result of the applicant's removal. However, nothing in the record indicates that the applicant's qualifying relatives would be harmed to a greater extent than is usual in the removal of a close family member. As the applicant failed to establish the required extreme hardship to her mother and children, the applicant is statutorily ineligible for relief, and no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

Counsel presents no information or evidence on appeal that would serve to overcome the district director's decision. In proceedings for application for waiver of grounds of inadmissibility under § 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.