

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

AUG 08 2007

FILE:

Office: KINGSTON, JAMAICA

Date:

IN RE: Applicant:

APPLICATION:

Application for Waiver of Inadmissibility Pursuant to Section 212(h) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF PETITIONER:

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Kingston, Jamaica, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of the Jamaica. The record contains the notes of the consular officer who conducted an interview of the applicant. The applicant was found to be inadmissible to the United States under 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). The consular officer's notes state that the applicant admitted taking her roommate's social security card, with her permission, in order to gain employment in the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on her behalf by her U.S. citizen mother. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that she may reside in the United States with her mother and siblings.

The officer in charge determined that the applicant was inadmissible based on the consular officer's notes, concluding that the applicant had been convicted of identity theft in the State of Florida on October 24, 1992. The officer in charge further found that the applicant had failed to establish that her U.S. citizen mother would suffer extreme hardship if the applicant was refused admission to the United States. *Decision of the Officer in Charge*, dated April 21, 2005.

On appeal, counsel contends that the officer in charge erred in finding the applicant inadmissible because the applicant was never convicted of any crime. Alternatively, counsel claims that the officer in charge should have applied 212(h)(1)(A) of the Act, 8 U.S.C. § 1182(h)(1)(A), and not (B). Further, counsel maintains that refusal to admit the applicant would cause extreme hardship to the applicant's mother. The appeal brief is accompanied by a letter from the Sheriff's Office in Broward County, Florida, two letters from physicians who have treated the applicant's mother, and a psychosocial evaluation of the applicant's family. *See Brief in Support of Appeal*.

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

(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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

(h) The [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

(1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] 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 [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 . . .

The record before the AAO does not contain any evidence that the applicant was convicted of a crime. The AAO notes that the applicant has submitted a letter from the Sheriff's Office in Broward County, Florida certifying that there is no criminal record relating to the applicant. The consular officer's notes relied upon by the officer in charge also do not support a finding that the applicant was convicted of a crime involving moral turpitude (CIMT), or has admitted having committed a CIMT or acts which constitute the essential elements of a CIMT. Consequently, the AAO finds that the applicant is not inadmissible under section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A).

The AAO notes further that the applicant's actions, as described by the consular officer, the officer in charge, and the applicant, do not appear to amount to fraudulently or willfully misrepresenting a material fact in order to procure an immigration benefit. Consequently, the AAO finds that the applicant's conduct as described does not support a finding of inadmissibility under section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C).¹

Having found that the applicant is not inadmissible, the AAO need not address the issue of extreme hardship to the applicant's mother. The AAO also need not address the applicability of section 212(h)(1)(A) of the Act, 8 U.S.C. § 1182(h)(1)(A), but notes nonetheless that the applicant's conduct occurred less than 15 years before her application for admission.

It is the applicant's burden to prove that she is not inadmissible under any provision of the Act. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.

¹ Section 212(a)(6)(C) of the Act states, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.