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FILE:

[REDACTED]

Office: ST. PAUL, MN

Date: MAR 16 2007

IN RE:

[REDACTED]

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:

[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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, St. Paul, Minnesota. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of Liberia 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 crimes involving moral turpitude (guilty pleas to theft on July 30, 1992 and November 11, 1994). The applicant has two U.S. citizen children and she seeks a waiver of inadmissibility in order to reside with her children in the United States.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her children and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *District Director's Decision*, dated August 24, 2006.

On appeal, counsel asserts that extreme hardship exists for the children when taking into account the psychological issues and health insurance issues, and when weighing all of the factors to be taken into account. *Form I-290B*, dated September 22, 2006.

The record includes, but is not limited to, counsel's brief, a doctor's letter for the applicant's son, a nurse's letter for the applicant's daughter and information on country conditions in Liberia. The entire record was reviewed and considered in arriving at a decision on the appeal.

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.

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

(h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . 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 [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 AAO notes that section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of lawful permanent resident or United States citizen family ties to this country, the qualifying relative's family ties outside the United States, the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries, the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The AAO notes that extreme hardship to a qualifying relative must be established in the event of relocation to Liberia or in the event that the qualifying relative resides in the United States, as there is no requirement to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of relocation to Liberia. Counsel states that the applicant's children have never left the United States, they are well adjusted in school, they would not have the same educational opportunities in Liberia, and the availability of medical care and education would be in question. *Brief in Support of Appeal*, at 7, dated October 18, 2006. Counsel states that the applicant's children attend church, are involved with community activities and are involved in several extracurricular activities at school. *Id.* The applicant similarly details her children's integration into the American lifestyle. *Applicant's Statement*, at 1-2, undated. The BIA found that a fifteen-year-old child who lived her entire life in the United States, was completely integrated into the American lifestyle and was not fluent in Chinese would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The record is not clear as to whether the applicant's children would have language issues in Liberia. As they are eight and nine years old, they are several years younger than the applicant in *Matter of Kao and Lin*. Therefore, the AAO does not find extreme hardship to the applicant's children solely based on *Matter of Kao and Lin*. However, based on the reasoning of the court in *Kao and Lin*, the AAO will consider the fact that the applicant's children have lived their entire life in the United States and their integration into the American lifestyle as factors which contribute to extreme hardship.

In regard to financial hardship, counsel states that there is no guarantee that the applicant can find work after an eighteen-year absence from the country, jobs are nearly impossible to come by, the children would lose their medical coverage and the applicant owns no property in Liberia. *Brief in Support of Appeal*, at 6. The applicant states that she would not be able to find employment in Liberia and it would be impossible to survive without a job. *Applicant's Statement*, at 2.¹ The record reflects that Liberia is one of the poorest countries in the world and the nationwide unemployment rate is very high. *U.S. Department of State Travel*

¹ The applicant states that she has \$85,000 in her mutual funds. *Applicant's Statement*, at 2. The AAO notes that this money would lessen the amount of financial hardship to her children, however, there is no substantiating evidence of these funds.

Warning for Liberia, dated March 30, 2006. Therefore, the applicant's claims of inability to find employment and financial hardship are plausible.

In regard to security issues, counsel states that Liberia is recovering from a civil war. *Brief in Support of Appeal*, at 6. The travel warning for Liberia details safety and security issues, despite the United Nation's deployment of 15,000 peacekeepers and 1,100 police advisor nationwide. *U.S. Department of State Travel Warning for Liberia*.

Counsel asserts that the applicant's son has eczema which worsens when the temperature is above 70 degrees and he has had surgery on his hand which requires continued treatment. *Brief in Support of Appeal*, at 1,6, dated October 18, 2006. The record includes a doctor's letters which states that the applicant's son's eczema gets worse when the temperature is about 70 degrees, he has prescription creams and he has numbness in his fingertips. *Letter from [REDACTED] M.D.*, dated October 4, 2006. The record also includes a letter which states that the applicant's daughter has moderate eczema. *Letter from [REDACTED] CNP*, dated October 18, 2006. The AAO notes that the actual severity of their problems is not clear from the record.

In regard to general medical services in Liberia, the record reflects that hospitals and medical facilities are poorly equipped, are incapable of providing even basic services and medicines are scarce. *U.S. Department of State Consular Information Sheet for Liberia*, at 3, dated July 27, 2006.

Based on a review of the record, the AAO finds that the applicant's children would suffer extreme hardship in the event of relocation to Liberia.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative resides in the United States. The record reflects that the applicant's children's father is deceased. *Certificate of Death for [REDACTED]*, dated December 9, 2000. Therefore, the applicant's children would be in the United States without a parent. This situation would constitute extreme hardship to the children if they remained in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to

the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The main adverse factors in the present case are the applicant's convictions for theft. The record does not indicate that these crimes were relatively serious in nature as the applicant's sentences were to pay fines and fees in the amount of \$112 and \$113 respectively for each conviction. *Hennepin County Criminal Courts Case History Reports*, dated February 24, 2005 and May 6, 2005.

The favorable factors include the presence of the U.S. citizen children, the lack of criminal activity in over 12 years which evidences rehabilitation, extreme hardship to the applicant's children, evidence of gainful employment and letters relating to her good moral character.

The AAO finds that the crimes committed by the applicant cannot be condoned. Nevertheless, the AAO finds that 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.