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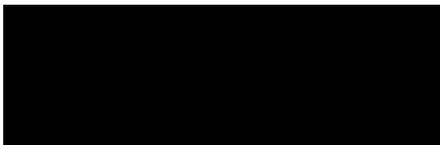
U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. A3000  
Washington, DC 20529



U.S. Citizenship  
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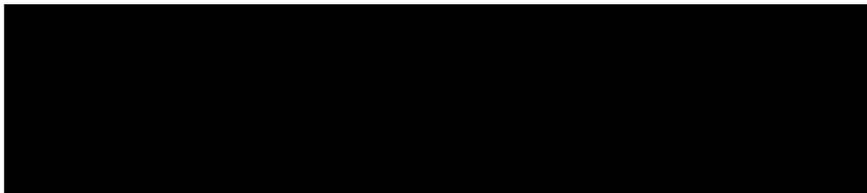
FILE: [REDACTED] Office: MIAMI, FLORIDA

Date: MAY 13 2008

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the 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, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Peru who last entered the United States as a visitor for pleasure on April 29, 1997. She was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act for a conviction of a crime involving moral turpitude (uttering a forged instrument; grand theft in the third degree; fraudulent use of a credit card). The applicant is the daughter of a U.S. citizen and the mother of three U.S. citizen children and is the beneficiary of an approved self-petition under the Violence Against Women Act (VAWA). She seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with her children.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of District Director*, dated April 11, 2006.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (CIS) erred in denying the waiver application because the applicant's three U.S. Citizen children and her U.S Citizen father would suffer extreme hardship if the applicant were removed from the United States. Specifically, counsel states that the applicant's son, who is now seven years old, suffers from Attention Deficit Disorder (ADD) and needs medication and intensive therapy, and this therapy needs to be in English, which is the child's first language. Counsel further asserts that the applicant's daughter, who is now thirteen years old, suffers from depression and is suicidal, and would be in great danger if she were separated from her mother. Lastly, counsel asserts that the applicant's father suffers from several ailments that would prevent him from traveling and visiting the applicant if she were removed to Peru.

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

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if-

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or 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 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; or

(C) the alien qualifies for classification under clause (iii) or (iv) of section 204(a)(1)(A) or classification under clause (ii) or (iii) of section 204(a)(1)(B);<sup>1</sup> and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

In the present case, the record reflects that the applicant is a thirty-two year-old native and citizen of Peru who has resided in the United States since 1993 and last entered on April 29, 1997 as a visitor for pleasure. She is the beneficiary of an approved I-360 Petition for Amerasian, Widow, or Special Immigrant (VAWA self-petition) as the spouse of an abusive U.S. Citizen. The applicant has three children who were born in the United States and reside with her in Miami, Florida. On September 5, 2001, the applicant was arrested for charges including grand theft and uttering a forged instrument in connection with the use of a credit card stolen from a car. She was convicted of these charges as well as fraudulent use of a credit card on October 5, 2001. The applicant was sentenced to one year of probation and ordered to perform community service and pay court costs.

The district director concluded that the applicant had failed to demonstrate that her removal “would result in extreme hardship to [her] qualifying relatives other than the normal emotional and financial distress.” *Decision of District Director* at 3. The district director cited an outdated version of section 212(h) of the Act that did not include subsection 1(C), which concerns VAWA self-petitioners. The applicant is the beneficiary of a VAWA self-petition for which she qualified pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a U.S. Citizen. Section 212(h)(1)(C) provides that a beneficiary of a VAWA self-petition is not required to demonstrate extreme hardship to a qualifying relative, but may be granted a waiver of inadmissibility as an exercise of discretion. The AAO therefore finds that the district director erred in denying the waiver application based on a finding that the applicant had not established her removal would result in extreme hardship to a qualifying relative.

Because the district director denied the waiver application based on a conclusion that the applicant did not establish extreme hardship to a qualifying relative as required by section 212(h)(1)(B) of the Act, the decision did not address whether a favorable exercise of discretion would be warranted in the applicant's case. 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) 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

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<sup>1</sup> These sections refer to self-petitioners under VAWA.

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). *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 adverse factor in the present case is the applicant's 2001 criminal conviction for uttering a forged instrument, grand theft in the third degree, and fraudulent use of a credit card. The AAO notes that this crime was committed nearly seven years ago, and there is no indication that the applicant has been arrested or convicted of a crime since that date. The AAO also notes that the applicant appears to have taken responsibility for her past actions, and acknowledges in her written statement that she made mistakes in the past but that she now must set an example for her children. *See letter from [REDACTED] dated January 21, 2004.* The record does not contain any evidence of significant violations of the immigration laws or other evidence of bad character or undesirability as a permanent resident of this country.

The favorable factors in the present case are hardship to the applicant and her children if she is removed, the applicant's lack of significant immigration violations in the U.S., the lack of a criminal record or offense since 2001, and family ties and length of time the applicant has resided in the United States. The applicant's daughter is now thirteen years old and was born in and has lived in the United States her entire life. Evidence in the file indicates that she has suffered from and has been treated for depression. *See Miami Children's Hospital Emergency Department – discharge instructions* dated April 25, 2006. Due to her age, the fact that she has lived her entire life in the United States, and her current psychological condition, the AAO concludes that relocating to Peru would result in extreme hardship to the applicant's daughter. *See Matter of Kao & Lin*, 23 I&N Dec. 45 (BIA 2001) (holding that a 15-year-old United States citizen child who had spent her entire life in the United States, had been completely integrated into the American lifestyle, and was not sufficiently fluent in the language of her parents' native country would experience extreme hardship if she relocated there).

The evidence further indicates that the father of the applicant's daughter is a drug abuser who was abusive to the applicant while they were married and has never been responsible for the care of the applicants' daughter. *See letter from [REDACTED] submitted in support of I-360 petition* dated April 18, 2000. Due to the potential emotional or psychological harm to the applicant's daughter if she were separated from her mother as well as the fact that she does not have a father to care for her, the AAO concludes that the applicant's daughter would experience extreme hardship if she were to remain in the United States without her mother.

Evidence on the record also indicates that the applicant's son, who is now seven years old, suffers from ADD and requires long-term therapy. A report from his therapist states,

Claudio needs to be in therapy to improve his behavior. This therapy needs to be done in English considering this is client's first language. . . . An extreme hardship could occur if client abandons

therapy, changes therapist, or client is placed in a different environment. Mother is essential for [REDACTED]'s rehabilitation. *The Children's Psychiatric Center, Monthly Report* dated May 2006.

In addition to the hardship to the applicant's children that would result from either relocating to Peru or remaining in the United States and being separated from their mother, the AAO finds that other favorable factor are present. Since her 2001 conviction for grand theft, uttering a forged instrument and fraudulent use of a credit card, the applicant has not been arrested or convicted of any crime. The applicant has lived in the United States since 1993, when she was seventeen years old. Her father also lives in the United States and is a U.S. Citizen, and it does not appear she has any strong family ties in Peru.

The AAO finds that the crime committed by the applicant is serious in nature and 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.