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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: CALIFORNIA SERVICE CENTER

Date: **SEP 17 2008**

IN RE:

Applicant:

[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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the Form I-601 will be denied.

The applicant is a native and citizen of Peru who 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), for having been convicted of a crime involving moral turpitude. The applicant seeks a waiver of her ground of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h).

The director found the applicant had failed to establish that a qualifying family member would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601 was denied accordingly.

On appeal the applicant indicates, through counsel, that the director did not properly analyze her extreme hardship claim. The applicant asserts that the evidence in the record establishes her children and elderly mother would suffer extreme emotional, and in her mother's case physical, hardship if the applicant were not allowed to remain in the United States.

Section 212(a)(2)(A)(i) of the Act provides in pertinent part that:

[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.

Criminal evidence contained in the record reflects that on September 14, 1998, the applicant plead nolo contendere to the offense of First Degree Arson, a felony, in violation of Florida Crimes Code section 806.01(1). Adjudication of guilt was withheld, and the applicant was placed on probation for a period of five years, and ordered to pay fines and costs.

Section 101(a)(48) of the Act, 8 U.S.C. § 1101(a)(48), defines the term, "conviction" as:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

The AAO finds, upon review of the evidence, that the applicant was convicted, for immigration purposes, of First Degree Arson.

The Board of Immigration Appeals (Board) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992) that:

[I]n determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. . . .

Florida Crimes Code section 806.01(1) states in pertinent part that:

Any person who willfully and unlawfully, or while in the commission of any felony, by fire or explosion, damages or causes to be damaged:

- (a) Any dwelling, whether occupied or not, or its contents;
- (b) Any structure, or contents thereof, where persons are normally present . . .; or
- (c) Any other structure that he or she knew or had reasonable grounds to believe was occupied by a human being,

Is guilty of arson in the first degree, which constitutes a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Florida Crimes Code section 775.082(3)(b) provides in pertinent part that a person who has been convicted of a first degree felony may be punished as follows:

[B]y a term of imprisonment not exceeding 30 years or when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment. . . .

The offense committed by the applicant contains an element of knowing or intentional corrupt conduct. Furthermore, the crime of Arson has specifically been found to be a crime involving moral turpitude. *See Vuksanovic v. U.S. Attorney General*, 439 F.3d 1308 (11<sup>th</sup> Cir. 2006) (citing, *Rodriguez-Herrera v. INS*, 52 F.3d 238, 239 n.2 (9<sup>th</sup> Cir. 1995), and *In re S-*, 3 I&N Dec. 617-18, 1949 WL 6507 (BIA 1949.)) The applicant has thus been convicted of a crime involving moral turpitude, and she is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Section 212(a)(2)(A)(2)(ii) of the Act, 8 U.S.C. § 1182(a)(2)(A)(2)(ii) provides in pertinent part:

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

...

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

In the present matter, the crime for which the applicant was convicted was a first degree felony punishable by up to thirty years of imprisonment. The exception contained in section 212(a)(2)(A)(ii)(II) of the Act therefore does not apply to the present case.

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

The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2)

. . . .  
(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 . . .

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.

Evidence in the record reflects that the applicant has a U.S. citizen son (born February 20, 1973), and that her daughter (born August 6, 1977) and mother (born October 5, 1933) are U.S. lawful permanent residents. The applicant's children and mother are qualifying family members for section 212(h) of the Act, waiver of inadmissibility purposes.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors deemed relevant in determining whether an alien has established extreme hardship. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in 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 Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). In *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the U.S. Ninth Circuit Court of Appeals defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court of Appeals emphasized that the common results of deportation are insufficient to prove extreme hardship.

The record contains the following evidence relating to the applicant’s extreme hardship claim:

An affidavit signed by the applicant’s 35-year-old son ( ) indicating that he and his mother have a very close relationship. He states that he is divorced and has three young children, and he indicates that his mother helps him care for his children, and that she provides a guiding influence in their lives. Mr. states that he and his children would suffer hardship and would miss the applicant if she did not live near them in the United States.

An affidavit signed by the applicant’s 31-year-old daughter ( ) indicating that she, her mother, and her siblings are a close-knit family, that she sees her mother often, and that her mother is a guiding influence in her life. She states that she would suffer if her mother did not live near her in the United States.

An affidavit signed by the applicant’s 74-year-old mother ( ) indicating that after the applicant divorced, she moved in with , and that over the years she has come to depend on the applicant. She states that the applicant helps her whenever she needs help, and that the applicant is a companion who she can fully trust and love. She states that her life would be incomplete without the applicant, and she states that she would suffer if the applicant did not live with her in the United States.

Medical documents reflecting that was diagnosed with, and treated in Peru for Cervical Cancer (in 1981), and Vesicular Cancer (between March 1986 and August 1988.)

The AAO finds, upon review of the evidence that the applicant has failed to demonstrate that her children and mother would suffer hardship beyond that which is normally expected upon the removal of a family member, if the applicant were denied admission into the United States.

The applicant did not claim that her mother or children would suffer extreme hardship if she were denied admission into the United States and they moved with her to Peru. Accordingly, the applicant failed to establish that her qualifying relatives would suffer extreme hardship in Peru. The applicant additionally failed to establish that her children and mother would suffer extreme hardship if they remained in the U.S. without the applicant.

The affidavit and medical evidence contained in the record fail to establish that [REDACTED] currently suffers from Cancer, or that she suffers from any other ailment that causes her to be dependant upon the applicant for assistance. The affidavit evidence also fails to establish that [REDACTED] has primary custody of his children, or that he is dependent upon the applicant to provide care for his children. The affidavits provide no other evidence to indicate that the applicant's mother or children would suffer hardship beyond that normally experienced upon the removal of a family member, if the applicant were denied admission into the United States.

A section 212(a)(9)(B)(v) of the Act 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. Because the applicant failed to establish that a qualifying family member would suffer extreme hardship if the applicant were denied admission into the United States, the AAO finds that it is unnecessary to address whether discretion should be exercised in the present matter.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to meet her burden of proof in the present matter. The appeal will therefore be dismissed and the Form I-601 will be denied.

**ORDER:** The appeal is dismissed. The application is denied.