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

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536



FILE#

Office: Miami

Date:

JUN 11 2003

IN RE: Applicant:



APPLICATION:

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

IN BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

JUN1103_01H2212

DISCUSSION: The waiver application was denied by the Acting District Director, Miami, Florida, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Haiti who was present in the United States without a lawful admission or parole in February 1981. She 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 is married to a native of Haiti and lawful permanent resident. The applicant seeks to adjust her status under the Haitian Refugee Immigrant Fairness Act (HRIFA). She seeks a waiver of the ground of inadmissibility under section 212(h) of the Act, 8 U.S.C § 1182(h).

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon her qualifying relatives and denied the application accordingly.

On appeal, the applicant states that she cannot be separated from her children and does not wish to be penalized due to her record of (child) abuse.

The record reflects the following:

1. On October 26, 1992, the applicant was convicted of Child Abuse and was sentenced to three years probation.
2. On September 5, 2000, the applicant was convicted of two counts of Aggravated Child Abuse and was sentenced to five years probation.

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

(A)(i) Except as provided in clause (ii), any 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 part, that: The Attorney General [now Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I),...or 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 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;...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 for adjustment of status. No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien

has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

Here, fewer than 15 years have elapsed since the applicant committed the last violation. Therefore, the applicant is ineligible for the waiver provided by section 212(h)(1)(A) of the Act.

Nothing could be clearer than Congress' desire in recent years to limit, rather than extend, the relief available to aliens who have committed crimes involving moral turpitude. In addition to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub L. 104-208, 110 Stat. 3009, this intent was recently seen in the provisions of the Antiterrorism and Effective Death Penalty Act of 1996, Pub.L. No. 104-132, 110 Stat. 1214, which relates to criminal aliens. Congress has almost unfettered power to decide which aliens may come to and remain in this country. This power has been recognized repeatedly by the Supreme Court. See *Fiallo v. Bell*, 430 U.S. 787 (1977); *Reno v. Flores*, 507 U.S. 292 (1993); *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). See also *Matter of Yeung*, 21 I&N Dec. 610, 612 (BIA 1997).

Section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission resulting from inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The key term in the provision is "extreme." Therefore, only in cases of great actual or prospective injury to the qualifying relative(s) will the bar be removed. Common results of the bar, such as separation or financial difficulties, in themselves, are insufficient to warrant approval of an application unless combined with much more extreme impacts. *Matter of Ngai*, 19 I&N Dec. 245 (Comm. 1984). "Extreme hardship" to an alien himself cannot be considered in determining eligibility for a section 212(h) waiver of inadmissibility. *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968).

In *Matter of Barnes*, 10 I&N Dec. 755 (Reg. Comm. 1964), it was held that an application for waiver of inadmissibility is denied in the exercise of discretion in the case of an alien who has



been released on bond, probation, or parole, because such a court-ordered disability places an extraordinary burden upon the sentenced individual. The Regional Commissioner determined that it is not unreasonable to await the lifting of the restraint imposed by sentence before exercising any discretion in the alien's behalf.

The applicant was last convicted of two counts of Aggravated Child Abuse on September 5, 2000, and she was placed on five years probation. The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the exercise of discretion and pursuant to such terms, conditions, and procedures as he may by regulations prescribe.

The applicant is still on probation, and she has failed to establish that she could meet the extraordinary burden of proof required in *Barnes*. Therefore, no purpose would be served in addressing the issue of extreme hardship until that burden is removed by October 2005. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

SEP 22 2004