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U. S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

Lg



FILE: [REDACTED]  
AA0-09-119-50002

Office: LOS ANGELES

Date: **MAY 28 2009**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Inadmissibility pursuant to Section 245A(d)(2)(B)(i) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a(d)(2)(B)(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

John F. Grissom  
Acting Chief, Administrative Appeals Office

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

The applicant is found to be inadmissible to the United States under section 212(a)(6)(E)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(E)(i), for having encouraged, induced, assisted, abetted, or aided an alien with trying to enter the United States in violation of law. In addition, the applicant is found to be inadmissible to the United States under section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), as an alien who has falsely represented herself to be a citizen of the United States for a benefit under the Act. The applicant seeks a waiver of inadmissibility pursuant to section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i), based on family unity grounds.

The record reflects that the applicant filed a Form I-690, Application for Waiver of Grounds of Inadmissibility Under Section 245A of the Act. The Director denied the waiver application because the applicant failed to provide any hardship, humanitarian or public interest reasons for the approval of her waiver.

On appeal, the applicant asserts that she has resided in the United States for 27 years and her three children were born in the United States. She states that all of her family members are in the United States. The applicant contends that she does not want to be separated from her children. She notes that she supports and provides financially for her children.

Section 212(a)(6)(E) of the Act provides:

Smugglers. – (i) In general. – Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

\* \* \*

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (ii) Falsely Claiming Citizenship. – (I) In general. – Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

The record reflects that on February 17, 2003, the applicant and her boyfriend, [REDACTED], applied for admission to the United States at Calexico, California. The applicant and [REDACTED] declared that they were United States citizens, and [REDACTED] presented a California Birth Certificate. The applicant and [REDACTED] were referred to secondary inspection. During secondary inspection, both the applicant and [REDACTED] admitted that they were, in fact, Mexican citizens. [REDACTED] testified that he did not have

the right to enter, travel, or remain in the United States. The applicant was then placed in removal proceedings and charged with being inadmissible to the United States.<sup>1</sup>

Based upon the foregoing, the AAO finds that the applicant is inadmissible to the United States under section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i), for having encouraged, induced, assisted, abetted, or aided an alien with trying to enter the United States in violation of law. In addition, the AAO finds that the applicant is inadmissible to the United States under section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for having falsely represented herself to be a citizen of the United States for a benefit under the Act.

A court disposition in the record reflects that on March 19, 2003, the applicant pled guilty to *embezzlement* in violation of section 503 of the California Penal Code and was sentenced to 36 months summary probation (Superior Court of California, County of Riverside, Case No. [REDACTED]). Every person guilty of embezzlement is punishable in the manner prescribed for theft of property of the value or kind embezzled; and where the property embezzled is an evidence of debt or right of action, the sum due upon it or secured to be paid by it must be taken as its value. Cal. Penal Code § 514 (West 2003). The disposition shows that the applicant was ordered to pay a fine of \$2,210.00; therefore she was convicted of *grand theft*. Cal. Penal Code § 487 (West 2003). *Grand theft* is punishable by imprisonment in the county jail not exceeding one year or in the state prison. Cal. Penal Code § 489 (West 2003).

U.S. Courts have held that the crime of theft or larceny, whether grand or petty, involves moral turpitude. See *Matter of Scarpulla*, 15 I&N Dec. 139, 140 (BIA 1974)(stating, "It is well settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude . . ."); *Morasch v. INS*, 363 F.2d 30, 31 (9<sup>th</sup> Cir. 1966)(stating, "Obviously, either petty or grand larceny, i.e., stealing another's property, qualifies [as a crime involving moral turpitude].") An alien convicted of a crime involving moral turpitude is inadmissible. Section 212(a)(2)(A)(i)(I), 8 U.S.C. § 1182(a)(2)(A)(i)(I) of the Act. There is no waiver available for this ground of inadmissibility. Section 245A(d)(2)(B)(ii)(I) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(ii)(I). Because the maximum penalty possible for the applicant's conviction did not exceed imprisonment for one year and she was not sentenced to a term of imprisonment in excess of six months, she qualifies for the petty offense exception to this ground of inadmissibility. Section 212(a)(2)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(ii)(II). Therefore, the applicant is not inadmissible on this ground.

Any alien who has been lawfully admitted for temporary resident status under section 245A(a) of the Act, such status not having been terminated, may apply for adjustment of status of that of an alien lawfully admitted for permanent residence if the alien is admissible to the United States as an immigrant. 8 C.F.R. § 245a.3(b)(3).

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<sup>1</sup> The Immigration Judge administratively closed the removal proceedings pending the adjudication of the applicant's Form I-698, Application to Adjust Status from Temporary to Permanent Resident Under Section 245A of the Act.

Section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i), permits the Secretary of Homeland Security to waive certain grounds of inadmissibility, including inadmissibility under section 212(a)(6)(E)(i) of the Act and section 212(a)(6)(C)(ii), “in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.”

The term family unity as used in section 245(d)(2)(B)(i) of the Act means maintaining the family group without deviation or change. 8 C.F.R. § 245a.1(m). The family group shall include the spouse, unmarried minor children under 18 years of age who are not members of some other household, and parents who reside regularly in the household of the family group. *Id.*

On appeal, the applicant asserts that she has resided in the United States for 27 years and her three children were born in the United States. She states that all of her family members are in the United States. The applicant contends that she does not want to be separated from her children. She notes that she supports and provides financially for her children.

In reviewing the appeal, the AAO determined that the Director’s decision was in error because he failed to consider family unity as a basis for the applicant’s waiver. The AAO issued a notice to the applicant informing her of this error and providing her with the opportunity to furnish evidence to establish her eligibility for a waiver based on family unity. Specifically, the AAO requested her children’s birth certificates and documentation of their residence to establish that they are minor children who reside in her household.

In response to this request, the applicant furnished copies of her children’s California birth certificates. The birth certificates reflect that the applicant has two minor children under 18 years of age: [REDACTED] (born on September 20, 1991) and [REDACTED] (born on June 5, 1999). The AAO notes that it is unclear whether [REDACTED] is a qualifying family member because the applicant indicated in a written statement that her daughter-in-law is living with her. Since [REDACTED] is the applicant’s only son, it can reasonably be presumed that he is married to the applicant’s daughter-in-law. As previously stated, the family group shall only include unmarried minor children. *See* 8 C.F.R. § 245a.1(m). Nevertheless, the applicant remains eligible for a waiver to assure family unity with her 9 year old daughter, [REDACTED].

As evidence of the applicant’s residence with [REDACTED], she furnished copies of her 2006, 2007 and 2008 tax returns. The tax returns show that [REDACTED] resided with the applicant for 12 months during each of the last three years. In addition, the applicant furnished a copy of [REDACTED] 2009 grade report issued from [REDACTED] located in Indio, California. Attached to this report is a copy of a handwritten note, dated October 27, 2008, from Visa de Monte Elementary School, Palm Springs, California, regarding [REDACTED] school transfer. The note provides the applicant’s name as the parent to be contacted. When viewing these documents in totality, the AAO finds that they establish [REDACTED] residence within the applicant’s household. As such, the applicant has established that she should be granted a waiver to assure family unity with her 9 year old United States citizen daughter.

Therefore, the AAO finds that the applicant has met her burden of proof in these proceedings. She has satisfied the requirements for a waiver of inadmissibility pursuant to section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i). Accordingly, the previous decision of the director will be withdrawn and the waiver application will be approved.

**ORDER:** The appeal is sustained.