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

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: APR 03 2009

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

Ellen C. Johnson

John F. Grissom
Acting Chief, 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 Haiti 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 committing a crime involving moral turpitude.

The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated June 24, 2006.

On appeal, in a letter dated December 15, 2006, the applicant expresses remorse about her prior conduct and indicates that her children would be destroyed if the waiver application were denied. She states that her three U.S. citizen children (ages 9 and 13 years old and 10 months old), and that she hoped that her oldest child, who is 16 years old and lives in Haiti, would have a better life in the United States. She states that her children depend upon her financially and that she lived in poverty in Haiti and was the only hope to send money home for food and living expenses and to pay for her son's education. She indicates that for the past three years she has not been in trouble and changed her life around by becoming a Christian and going to school to obtain a certified nursing assistant license. She states that she has been working since then to provide for her children and would like to go back to school to become a licensed practical nurse. She states that she has no family in the United States to raise her children if she is deported to Haiti and that she would not want to leave her children and live in poverty in Haiti, not knowing if they would be safe and happy.

The AAO will first address the finding of inadmissibility

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

> (A)(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 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines "conviction" for immigration purposes 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 record reflects that in the County Court of Manatee County, Florida, the applicant entered a plea of nolo contendere to misdemeanor damaging property-criminal mischief on February 9, 1999. The judge ordered her to serve probation, pay a fine, perform community service, attend an anger control course, and make restitution. On December 19, 2000, the applicant pled nolo contendere to a felony of the third degree, uttering forged bills, checks, drafts, or notes in 2000 in violation of Title XLVI, Chapter 831, Section 831.09 of the Florida Statutes. The judge ordered her to serve 11 days in jail and one year of probation, and to pay court costs and fines.

The passing or possession of counterfeit coins "with intent to defraud" in the offense's statutory language involves moral turpitude. See, *Matter of K-*, 7 I&N Dec. 178 (1956). With the case here, the statutory language of the offense of uttering forged bills, checks, drafts, or notes provides:

> Whoever utters or passes or tenders in payment as true, any such false, altered, forged, or counterfeit note, or any bank bill, check, draft, or promissory note, payable to the bearer thereof or to the order of any person, issued as aforesaid, knowing the same to be false, altered, forged, or counterfeit, with intent to injure or defraud any person . . .

Because a conviction requires a person to act "with intent to defraud," the applicant's offense involves moral turpitude.

Furthermore, the offense of uttering forged bills, checks, drafts, or notes does not qualify for the petty offense exception under section 212(a)(2)(a)(ii) of the Act as it is a third-degree felony with a term of imprisonment not exceeding 5 years. *See, Title XLVI, Chapter 775, section 775.082 of the Florida Statutes*. The AAO therefore need not determine whether the applicant's damaging property-criminal mischief offense involves moral turpitude.

The AAO will now consider whether granting the applicant's section 212(h) waiver is warranted.

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

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -
>
> (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 . . .

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case are the applicant's two U.S. citizen children. Although the applicant states that her father is a lawful permanent resident of the United States and that she has a 10 month old U.S. citizen child, there is no documentation in the record substantiating either of these alleged facts.

If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 565-566.

In *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

In support of the waiver application, the record contains financial documentation, a letter from the applicant, birth certificates, criminal records, an employment letter, and other documents.

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant's qualifying relative must be established if she or he joins the applicant, and alternatively, if she or he remains in the United States without him. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

With regard to joining their mother to live in Haiti, the applicant indicates that her U.S. citizen children, who are now 12 and 15 years old, would live in poverty. The affidavit by [redacted] indicates that the language spoken in Haiti is Creole, not English.

In *Matter of Kao & Lin*, 23 I&N Dec. 45, 50 (BIA 2001), the BIA found that the language capabilities of the respondent's 15-year-old daughter were not sufficient for her to adequately transition to daily life in Taiwan, and that she had lived her entire life in the United States and was completely integrated into an American lifestyle, and uprooting her at this stage in her education and her social development to survive in a Chinese-only environment would constitute extreme hardship.

Bearing in mind *Matter of Kao & Lin*, the AAO finds that the applicant's two U.S. children, who are still of school age, being 15 and nearly 12 years old, would experience extreme hardship if they were to live in Haiti, a country with a vastly different culture and where they do not speak the language.

The applicant states that her children are "depending on me to bring food to the table," and that she has no family in the United States to raise her children if the waiver application were denied. The record contains an employment letter dated March 10, 2004, by the human resources director of Care on Wheels, which states that the applicant has been employed their since November 2002. The applicant earned a total of $8,374 in 2003. *Form 1099*. The applicant indicates that she is employed as a certified nursing assistant. The record indicates that the applicant is not married.

After a careful consideration of the record, and, in particular, the documentation of the applicant's employment and her claim that she is the sole support for her two U.S. citizen children, the AAO finds that the evidence, when considered in the aggregate, establishes that the applicant's children would experience extreme hardship if they were to remain in the United States without her.

The grant or denial of the above waiver does depend only on the issue of the meaning of "extreme hardship." Once extreme hardship is established, the Secretary then determines whether an exercise of discretion is warranted.

The favorable factors in this matter are the extreme hardship to the applicant's children, the applicant's history of employment and payment of taxes, her completion of her sentences, her remorse for her criminal offenses, and the passage of approximately eight years since her most recent criminal conviction. The AAO notes that the applicant conveys that she obtained a certified nursing assistant license and has changed her life around.

The unfavorable factors in this matter are the applicant's criminal convictions and her periods of unauthorized presence. The AAO notes that the applicant does not appear to have been convicted of any other crimes since 2001.

While the AAO cannot emphasize enough the seriousness with which it regards the applicant's flagrant breach of the laws of the United States, the severity of the applicant's criminal convictions are at least partially diminished by the fact that eight years have elapsed since her most recent

conviction. The AAO finds that the hardship imposed on the applicant's children as a result of her inadmissibility outweighs the unfavorable factors in the application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is approved.