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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TAMPA (MIAMI, FLORIDA) Date: FEB 24 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Michael Shumway

for John F. Grissom, Acting Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Korea 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 crimes involving moral turpitude. The record indicates that the applicant is the daughter of lawful permanent residents of the United States. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with her lawful permanent resident parents and sister.

The Acting District Director found that the applicant failed to establish that extreme hardship would be imposed on her qualifying relatives and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated June 13, 2006.

On appeal, the applicant, through counsel, asserts that the "decision ignored offsetting humitarian [sic] considerations, extreme hardship factors, and Applicant's remorse & rehabilitation, long term ties in USA- Parents are LPRs whom Applicant lives since birth." *Form I-290B*, filed July 5, 2006.

The record includes, but is not limited to, counsel's brief, an affidavit from the applicant's father, various bills for credit cards and household expenses, and the criminal court disposition for the applicant's arrest and conviction. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on March 27, 2002, the applicant was convicted of grand theft in the third degree, fraudulent use of personal identification, and petit theft, by a judge in the Circuit Court of Hillsborough County, Florida, and was sentenced to eighteen (18) months probation. Additionally, the applicant was required to pay court fees and fines.

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

> (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...or an attempt or conspiracy to commit such a crime...is inadmissible.

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

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

(1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] 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 [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...

The applicant entered the United States on January 18, 1996 on a B-2 nonimmigrant visa. On July 18, 1996, the applicant obtained an F-1 student visa. On March 27, 2002, the applicant pled guilty to grand theft in the third degree, fraudulent use of personal identification, and petit theft. On the same day, a judge in the Circuit Court of Hillsborough County, Florida, sentenced the applicant to eighteen (18) months probation, and required the applicant to pay court fees and fines. On July 30, 2002, the applicant's father's Petition for Amerasian, Widower or Special Immigrant (Form I-360) was approved. On November 25, 2002, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On October 1, 2003, the applicant filed a Form I-601. On June 13, 2006, the Acting District Director denied the Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relatives.

The AAO notes that robbery and theft offenses are considered crimes involving moral turpitude. *See Matter of Carballe*, 19 I&N Dec. 357 (BIA 1986); *see also Matter of Martin*, 18 I&N Dec. 226 (BIA 1982); *Matter of Garcia*, 11 I&N Dec. 521 (BIA 1966); *Chen v. INS*, 87 F.3d 5 (1st Cir. 1996). Counsel claims that the applicant's offense was not serious and she "has completed her financial obligations to the States and has not engaged in this type of activity since then." *Appeal Brief*, page 9, dated August 13, 2006. The AAO notes even though the applicant was only sentenced to probation, court fees and fines, she was convicted of crimes involving moral turpitude and is now inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act. Additionally, the AAO notes that counsel has not disputed that the applicant's convictions are for crimes involving moral turpitude or that the applicant is inadmissible under section 212(a)(2)(A) of the Act.

The applicant is seeking a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act. A waiver under section 212(h) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent or child of the applicant. Hardship the alien herself experiences upon removal is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's lawful permanent resident parents. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

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 it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

Counsel asserts that the applicant's lawful permanent resident parents would face extreme hardship if the applicant were removed from the United States. *See appeal brief,* page 7, dated August 13, 2006. Counsel claims the applicant "has been involved with [sic] emotionally with her family and financially supporting her parent's financial situation." *Id.* at 2. The applicant's father states "[they] are a close family: [He] cannot imagine living without [the applicant] in the United States." *Affidavit from* [redacted], undated. Counsel states the applicant's father "owns a small cleaning business and is a church worker." *Appeal Brief, supra* at 10. The AAO notes that it has not been established that the applicant's parents have no transferable skills that would aid them in obtaining a job in Korea. Additionally, the AAO notes that the applicant's parents are natives of Korea, who speak the native language, and they have not established that they have no family ties to Korea. The AAO finds that the applicant failed to establish that her parents would suffer extreme hardship if they accompany her to Korea.

In addition, counsel does not establish extreme hardship to the applicant's parents if they remain in the United States, maintaining their employment and church association. As lawful permanent residents of the United States, the applicant's parents are not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's father states that if he "went back to Korea...[his] church members, as well as [his] wife, will suffer. [He] [has] deep roots in the Korean community in Tampa and Orlando because of [his] position in the church." *Affidavit from* [redacted] *supra.* Counsel claims that the applicant will not be able to find a job in Korea and her parents will not be able to support her in Korea. *Appeal Brief, supra* at 10. The AAO notes that, as stated above, hardship the alien herself experiences upon removal is irrelevant to section 212(h) waiver proceedings. Additionally, the AAO notes that the applicant is a college graduate, and beyond generalized assertions regarding country conditions in Korea, the record fails to

demonstrate that the applicant cannot obtain employment in Korea, or that she will be unable to contribute to her parent's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang,* 450 U.S. 139 (1981).

United States 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 (9th Cir. 1991). For example, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the Board held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. In *Hassan, supra,* the Ninth Circuit Court of Appeals held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's lawful permanent resident parents will endure hardship as a result of separation from the applicant. However, their situation if they remain in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's parents caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(2)(A) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.