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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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[redacted]

FILE: [redacted] Office: INDIANAPOLIS, IN Date: JUN 04 2009

IN RE: [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).

Ellen C. Johnson

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Indianapolis, Indiana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Honduras, was found 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 two crimes involving moral turpitude. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with his wife and daughter in the United States.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601 accordingly. *Decision of the District Director,* dated November 21, 2006.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. indicating they were married on May 21, 2003; a copy of naturalization certificate; a declaration from a copy of the U.S. Department of State 2005 Country Reports on Human Rights Practices for Honduras and other background materials; a budget for the [redacted] family indicating monthly expenses of $3,388; letters from [redacted] physician and copies of medical records; letters of support, including letters from the applicant's daughter from a previous relationship; copies of tax returns and other financial documentation; a letter from the applicant's employer; photos of the applicant and his family; conviction documents; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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:

> (h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (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 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 record shows that on July 4, 1995, the applicant was arrested and subsequently convicted of theft/criminal conversion in violation of Indiana Code § 35-43-4-3. He received a one year suspended sentence. The record further shows that on October 3, 1998, the applicant was again arrested and subsequently convicted of theft/criminal conversion in violation of Indiana Code § 35-43-4-3. He again received a one year suspended sentence.

In the recently decided *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. However, the AAO notes that the statute under which the applicant was convicted is not a divisible statute. Moreover, it is well established that theft is a crime involving moral turpitude and counsel does not contend otherwise. *See Briseno-Flores v. Att'y Gen. of U.S.*, 492 F.3d 226, 228 (3d Cir. 2007) (guilty plea to petty theft was a crime involving moral turpitude) (citing *Quilodran-Brau v. Holland,* 232 F.2d 183, 184 (3d Cir. 1956) ("It is well settled as a matter of law that the crime of larceny is one involving moral turpitude regardless of the value of that which is stolen"), and *Matter of Scarpulla,* 15 I&N Dec. 139, 140-41 (BIA 1974) ("It is well settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude")). Therefore, the applicant is inadmissible under section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), for having committed a crime involving moral turpitude.

A section 212(h) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse, parent, son, or daughter of the applicant. *See* section 212(h) of the Act, 8 U.S.C. § 1182(h). 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-Moralez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999), provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under the Act. These 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.

It is not evident from the record that the applicant's wife or daughter will suffer extreme hardship as a result of the applicant's waiver being denied.

In this case, states that in June 2001, she suffered a "complicated heart attack." After staying in a rehabilitation hospital and moving in with her niece, went back to work in November 2001. states that since this experience, she suffers from stress, nervousness, and "severe physical and psychological traumas." She also states that during that time, she felt very lonely and feared losing her job for being unable to perform. states she met the applicant the following year during the summer of 2002 and got married in May 2003. states that shortly after their marriage, she stepped on a small toy car and fell on the kitchen floor, causing her to almost lose consciousness. states she was in a lot of pain and could barely walk. An MRI revealed that she had a tumor on her spine. She claims the applicant helped her tremendously during this time when she could not shower without assistance or sleep because of the pain. had surgery on her spine in October 2003 and "[her] pain disappeared." In addition, states that during the summer of 2006, she was able to go on vacation to Honduras to see her children and her siblings. She claims that after she returned from vacation, she lost her job after her employer determined she was not productive enough. contends that she and the applicant have a good marriage, working and solving problems together. She states she has a very good relationship with her children in Honduras and that they talk on the phone at least twice each week. She contends she has a good relationship with the applicant's daughter, who visits them in Indianapolis often. claims she could not survive without the applicant, that she would not have enough money to cover her expenses, and that her health would deteriorate and she "could die sooner." She states that because of her disability, she is not capable of solving problems independently and would be unable to "solve common work related issues," or go to the doctor to obtain her medications. *Declaration of in Support of 's I-601 Waiver of Grounds of Excludability*, undated.

A letter from physician states that was first evaluated five years ago for her "intracerebral hemorrhage that resulted in mild left hemiparesis" and that since then, underlying hyptertension has been controlled. The doctor further states that had "episodic, intractable low back pain radiating to both lower extremeties [for which s]he underwent resection of a right L5 synovial cyst for a severe L5 radiculopathy." The doctor concludes that has residual back pain, occasional cramping in her legs, and that she needs her husband's constant supervision and support for her depression. *Letter from* , dated July 20, 2006; *see also Letter from* , dated June 11, 2005 (stating should continue in her current job and avoid any activity that increases her stress, which increases her blood pressure and risk of stroke); *Letter from* , dated September 2, 2003 (describing back problems).

The applicant's daughter, , a lawful permanent resident who is twenty years old, states that she visits her father and a few times a year and stays for a few weeks, such as during summer vacation or spring or winter break. states she would not have anywhere to go if her father departed the United States. She states she depends on her father for moral support, needs him to get her through her problems, and needs "a male figure to look up to." In addition, states she needs her father for financial support. She contends that if her father left the country, besides her mother, she would have no one else to go to if she needed school supplies or help fixing her car. *Letters from* both undated.

After a careful review of the record, there is insufficient evidence showing that the applicant's wife or daughter would suffer extreme hardship as a result of the applicant's waiver application being denied.

In this case, the AAO finds that would experience extreme financial hardship if she remained in the United States and the applicant's waiver application is denied. According to the most recent tax documents in the record, in 2005, the applicant earned $17,622 while [redacted] earned $8,293. In 2003, the applicant earned $19,295 and [redacted] earned $17,561. In addition, according to the monthly budget in the record, the applicant and his wife have a mortgage payment of $570 per month, medical expenses of $925 per month, and total monthly expenses of $3,388. It is evident from the record that the applicant earns the majority of the family's income and that Ms. income alone would be insufficient to meet her monthly expenses. The AAO finds that if the applicant were removed, [redacted] would suffer extreme financial hardship.

Nonetheless, neither [redacted] nor the applicant's daughter, [redacted], discuss the possibility of moving back to Honduras, where they were both born, to avoid the hardship of separation, and neither address whether such a move would represent a hardship for them. Significantly, according to [redacted] declaration, her own children, as well as her siblings and her family, currently live in Honduras. *Declaration of* [redacted], *supra.* In addition, [redacted], who has worked in the United States in "labor," "packing," and "assembly," does not claim she cannot find employment in Honduras. *Biographic Information (Form G-325A)*, signed by [redacted] on April 28, 2006. Furthermore, although the record shows that [redacted] has experienced significant health problems in the past, after her back surgery, [redacted] herself states that her pain has disappeared. *Declaration of* [redacted] *supra.* According to her physician, at most, currently experiences residual back pain, occasional leg cramps, and depression. *Letters from* [redacted] *supra.* Although physician concludes that "it is medically necessary that [redacted] have constant company and support" from her husband, the physician does not describe the type of assistance [redacted] requires, and [redacted] and her physician do not contend that she cannot receive adequate medical attention in Honduras. Although counsel contends [redacted] will have a lack of adequate medical care available to her in Honduras, *Letter from* [redacted] dated July 24, 2006, at 5, there is no evidence [redacted] requires on-going medical treatment of any kind.[1]

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[1] The AAO notes that several of counsel's assertions are contradicted by other information in the record. For instance, counsel contends that [redacted] has "few substantial connections remaining [in] Honduras"; however, the record indicates that her children and siblings remain in Honduras. *Compare Letter from* [redacted] *supra*, at 2, *with Declaration of* [redacted] *supra.* Similarly, counsel asserts that [redacted] "extensive medical conditions" have caused her to be "unable to travel to Honduras." *Compare Letter from* [redacted], *supra*, at 2 ([redacted] is physically prohibited from returning to Honduras"), *with Declaration of* [redacted] *supra* ("that next summer [of 2006], I was able to go on vacation to Honduras and see my family, my children and my siblings."). Furthermore, counsel's statement that [redacted] has had "long periods of unemployment due to her disabilities," is contradicted by Ms. [redacted] Biographical Information Form which shows continuous employment from July 1997 until the present except for a two-month period in November and December 2005. *Compare Letter from* [redacted], *supra*, at 4, *with Biographic Information Form (Form G-325A)*, signed by [redacted] on April 28, 2006.

Although the AAO is sympathetic to the family's circumstances, there is insufficient record evidence to show that [redacted] or [redacted] would suffer extreme hardship if they moved back to Honduras to avoid the hardship of separation from the applicant.

A review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative 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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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.