

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



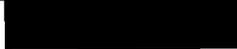
U.S. Citizenship
and Immigration
Services

PUBLIC COPY



H₂

FILE:



Office: BALTIMORE, MD

Date:

MAR 19 2010

IN RE:



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:



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.

A handwritten signature in cursive script, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of El Salvador 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 crimes involving moral turpitude. The applicant has two U.S. citizen children, a U.S. citizen spouse and lawful permanent resident parents, and she seeks a waiver of inadmissibility in order to reside with her family in the United States.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *District Director's I-601 Decision*, at 4-5, dated June 25, 2009.

On appeal, counsel asserts that the district director failed to balance all of the equities and properly weigh all of the relevant factors, and the record alleges and contains evidence of hardship to the applicant's qualifying relatives. *Form I-290B*, at, received July 28, 2009.

The record includes, but is not limited to, counsel's brief; statements from the applicant, her spouse and her parents; medical records for the applicant's father; letters of support for the applicant; and information on country conditions in El Salvador. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant was twice convicted of grand larceny under Virginia Code § 18.2-95. On June 27, 1996, she was sentenced to a one year suspended sentence conditioned on uniform good behavior and 240 hours of community service. The applicant's subsequent conviction for a December 23, 2000 offense resulted in a two year suspended sentence (except for five days), payment of court costs of \$843 and two years of probation. As such, the applicant is inadmissible to the United States under Section 212(a)(2)(A)(i)(I) of the Act for being convicted of crimes involving moral turpitude.¹

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

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

¹ The AAO notes that the applicant was also found to be inadmissible pursuant to section 212(a)(9)(B)(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i), which addresses unlawful presence. *District Director's I-601 Decision*, at 2. The district director also refers to section 212(i) of the Act, 8 U.S.C. § 1182(i), the waiver provision for 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), which addresses fraud and misrepresentation. *District Director's I-485 Decision*, at 1, dated June 25, 2009. The AAO notes that the applicant is not inadmissible under either of these sections of the Act.

- (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 pertinent part, that:

(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

....

- (1)(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.

The AAO notes that section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to a qualifying relative must be established in the event of relocation to El Salvador or in the event that the qualifying relative resides in the United States, as there is no requirement to reside outside the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of relocation to El Salvador. The AAO notes that El Salvador is currently designated under the Temporary Protected Status (TPS) program due to the devastation caused by a series of severe earthquakes in 2001. 73 Fed. Reg. 57129 (Oct. 1, 2008) Under the TPS program,

citizens of El Salvador are allowed to remain in the United States temporarily due to the inability of El Salvador to handle the return of its nationals due to the disruption of living conditions. As such, requiring the applicant's U.S. citizen father to relocate to El Salvador in its current state would constitute extreme hardship. The AAO also notes that the applicant's father has been diagnosed with hypertension, diabetes, nephrolithiasis, depression, renal insufficiency, pterygium and bilateral vision loss; and he is on numerous medications. *Letter from* [REDACTED], dated March 25, 2009.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative resides in the United States. The applicant's parents state that the applicant's father is recovering from cataract surgery but his vision is greatly obstructed; he is incapable of going outside unaccompanied; the applicant has practically moved in with them to assist with their daily necessities; without the applicant's help, their situation will be dire; the applicant's father is unable to drive due to his vision impairment and her mother does not drive; the applicant and her sister are essential to keeping their parents current with doctor's appointments, follow-up visits and treatment procedures; the applicant takes them out for walks and generally cheers them up; they feel extreme anguish at the thought of the applicant being sent to El Salvador without the possibility of returning; in El Salvador, there is a bad economic situation and rampant delinquency, as well as widespread criminal gangs who harass people returning from the United States; they are worried that the applicant may suffer persecution at the hands of the socialist party FMLN since all of her family members are living in the United States; and they are extremely saddened by the implications that the applicant's absence will have for her children and grandchildren as she is a dedicated mother who loves them. *Applicant's Parents' Statement*, at 1-2, dated March 30, 2009. As mentioned, the record reflects that the applicant's 72-year-old father has numerous medical problems including hypertension, diabetes, nephrolithiasis, renal insufficiency, pterygium and bilateral vision loss. *Letter from* [REDACTED]. He has also been diagnosed with depression. *Id.* The applicant's father's physician states that the applicant's father requires assistance to manage his medications, medical visits and basic needs. *Id.* The record reflects that the applicant's father had cataract surgery on his right eye on January 22, 2009, with a post-op period until April 22, 2009. *Letter from* [REDACTED], dated March 31, 2009.

The record includes evidence of widespread violent crime, including gang-related violence, in El Salvador. *U.S. Department of State, 2008 Human Rights Report: El Salvador*, at 1, dated February 25, 2009. The record reflects that El Salvador is one of the ten most violent countries in the world. *El Salvador 2009 Crime and Safety Report*, at 1, dated April 14, 2009. As previously noted, El Salvador is currently designated under the TPS program based on its inability to handle the return of its citizens as a result of the disruption of living conditions created by a series of earthquakes in 2001. As such, the record documents the plausibility of the applicant's father's concerns about his daughter's safety if she is removed to El Salvador. Based on the totality of the hardship factors presented, including the medical problems of the applicant's father, his age, his emotional health and conditions in El Salvador, the AAO finds that the applicant's father would experience extreme hardship if he remained in the United States without the applicant.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant's convictions for theft, entry without inspection and her subsequent unauthorized stay and employment.

The favorable factors include the presence of two U.S. citizen children, a U.S. citizen spouse and lawful permanent resident parents; the absence of any criminal activity in over nine years, which evidences rehabilitation; extreme hardship to the applicant's father in the event her waiver application is denied; evidence of authorized employment since 1996; and letters relating to her good moral character.

The AAO finds that the crimes committed by the applicant cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.