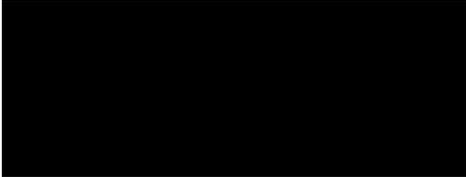




U.S. Citizenship
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Services

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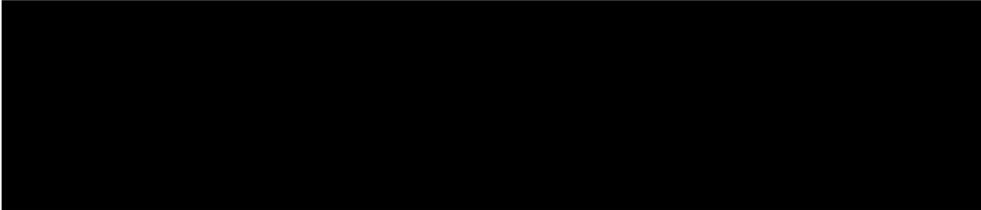
IN RE:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Paraguay 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 a crime involving moral turpitude. The record indicates that the applicant is the beneficiary of an approved Immigrant Petition for Alien Worker (Form I-140). 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 three United States citizen daughters.

The District Director found there was no evidence that the applicant's children would experience any extreme hardship if the applicant were removed to Paraguay and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated July 30, 2005.

On appeal, the applicant, through counsel, asserts that Citizenship and Immigration Services (CIS) "erred in denying [the applicant's] I-601 waiver for failure to show extreme hardship to a qualifying relative." *Attachment to Form I-290B*, filed August 22, 2005. Counsel claims the applicant is the sole provider for her three minor children. *Brief attached to Form I-290B*, filed August 22, 2005.

The record includes, but is not limited to, counsel's brief, an affidavit by the applicant, arrests records, the final court dispositions for the applicant's convictions, and a psychosocial report on the applicant and her children prepared by [REDACTED]. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on November 17, 1997, the applicant was convicted of two charges of larceny in the 4th degree, class D felonies, in violation of Connecticut Penal Code § 53a-124. On July 29, 1999, the applicant was sentenced to three (3) years probation. On May 8, 2005, the applicant was terminated from probation after having successfully completed her period of probation.

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

(A) *Conviction of certain crimes.*—

- (i) In general.—Except as provided in clause (ii), any 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...

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

- (h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his

discretion, waive the application of subparagraphs (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 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...

(2) the [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

In the present application, the record indicates that on December 4, 1988, the applicant and her husband, [REDACTED], entered the United States on B2 nonimmigrant visas, with authorization to stay until May 4, 1989. On January 12, 1992, the applicant had her first daughter, [REDACTED] in Mount Pleasant, New York. On January 4, 1993, the applicant had her second daughter, [REDACTED] in Mount Pleasant, New York. On August 10, 1995, the applicant had her third daughter, [REDACTED] in Greenwich, Connecticut. In 1996, the applicant and [REDACTED] separated, and on August 28, 1998, the applicant obtained a divorce from [REDACTED]. On April 29, 1997, the applicant was arrested under the charge of larceny. On November 17, 1997, the applicant was convicted of two charges of larceny in the 4th degree, class D felonies, and was sentenced to three (3) years probation. On July 8, 2002, the applicant's employer, [REDACTED], filed a Form I-140 for the applicant. On December 6, 2002, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On September 27, 2003, the Form I-140 was approved. On June 6, 2005, the applicant filed a Form I-601, which the District Director denied on July 30, 2005, finding the applicant failed to demonstrate extreme hardship to her three United States citizen children. The District Director denied the Form I-485; however, it was reopened on August 30, 2005, so that the applicant could appeal the decision on the Form I-601.

The AAO notes that on May 8, 2005, the applicant was terminated from probation after having successfully completed her period of probation; however, even though the applicant successfully completed her probation, she has still been convicted of a crime for immigration purposes. Section 101(a)(48) of the Act states that when an alien enters a plea of guilty, or is found guilty, and a formal judgment of guilt is entered by a court, where a judge has ordered some form of punishment, penalty, or restraint on the alien's liberty, there has been a conviction for immigration purposes. On November 17, 1997, the applicant was convicted of two charges of larceny in the 4th degree. On July 29, 1999, the applicant was sentenced to three (3) years probation, which is a restraint on the applicant's liberty. The applicant is clearly inadmissible under section 212(a)(2)(A)(i)(I) 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 three United States citizen children. 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 (BIA) 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.

The AAO finds that the applicant meets the requirements for a waiver of her grounds of inadmissibility under section 212(h)(1)(B) of the Act, in that the applicant's children would suffer emotional and financial hardship as a result of their separation from the applicant. Counsel contends that the applicant is the sole provider for her three minor children. *Brief attached to Form I-290B*, filed August 22, 2005. The applicant states her ex-husband, and the father of her children, abandoned the children in Paraguay and she has sole custody of the children. *Affidavit of* [REDACTED] dated June 8, 2005. The applicant states her children are excelling academically and are involved in various extracurricular activities. *Id.* The AAO notes that the applicant submitted a great deal of documentation to demonstrate how well her children are doing in school. The applicant claims her children suffer from several health issues. [REDACTED] suffers from asthma, respiratory distress, allergies, and congenial scoliosis, which require "frequent trips [to] a chiropractic specialist." *Id.*; *see also Brief attached to Form I-290B, supra*; *see also Psychosocial Report by* [REDACTED] dated March 3, 2005; *see also letter from* [REDACTED], *Willows Pediatrics Group, P.C.*, dated July 27, 2005; *see also letter from* [REDACTED], *Coren Chiropractic Care, P.C.*, dated June 22, 2005. [REDACTED] suffers from asthma, respiratory distress, and a dislocated knee, which requires physical therapy. *Id.*; *see also Office Visit*

notes from [REDACTED] [REDACTED] is being "treated for cervical spine issues and is being monitored for spinal curvature." Letter from [REDACTED], *supra*. Counsel claims the applicant has good health insurance through her employer, which allows her children to receive good medical care. Brief attached to Form I-290B, *supra*. The applicant claims that if she returned to Paraguay with her children, she does not know what kind of employment she could get and how she would take care of the children. Affidavit of [REDACTED] *supra*. The applicant states the children do not speak Spanish or Guarani, the native language of Paraguay, and have adjusted to their lives in the United States. *Id.* In regards to her criminal activity, the applicant states she "deeply regret[s] [her] past indiscretion...[and] [s]ince that one lapse in judgment, [she has] never been involved in any other criminal or inappropriate activity." *Id.*

The AAO notes that the applicant is the sole provider for her children, and she has no other family in the United States that could help raise her children. In *Matter of Recinas*, 23 I&N Dec. 467, 469-70 (BIA 2002), the respondent was "a single mother of six children, four of whom are United States citizens...The respondent is divorced from the father of her United States citizen children...[and] there is no indication that he remains actively involved in their lives." The respondent's four United States citizen children were entirely dependent on their single mother for support, which is similar to the applicant's situation in this case. The BIA held that "the heavy financial and familial burden on the adult respondent, the lack of support from the children's father, the United States citizen children's unfamiliarity with the Spanish language," and other factors, "render the hardship in this case well beyond that which is normally experienced in most cases of removal." *Id.* at 472. Additionally, in *Matter of Kao & Lin*, 23 I&N Dec. 45 (BIA 2001), the BIA held that a fifteen (15) year old United States citizen child of Chinese immigrants, would suffer extreme hardship if their parents were deported from the United States. "We are satisfied that to uproot the oldest daughter, [REDACTED] at this stage in her education and her social development and to require her to survive in a Chinese-only environment would be a significant disruption that would constitute extreme hardship. Consequently, it is unnecessary to determine whether the other citizen children would also suffer extreme hardship." *Id.* at 50. The AAO finds that if the applicant were removed from the United States, her children, especially her oldest child, [REDACTED] would suffer extreme hardship staying in the United States without their mother or joining their mother in Paraguay. The children are incapable of maintaining their well being in the absence of the applicant.

The favorable factors presented by the applicant are the extreme hardship to her three United States citizen children, who solely depend on her for emotional and financial support, and the lack of any other criminal convictions since her last conviction in 1997. The record of proceedings does not establish that the admission of the applicant to the United States would be "contrary to the national welfare, safety, or security of the United States."

The unfavorable factors presented in the application are the applicant's conviction for larceny in 1997 and periods of unauthorized presence and employment. The AAO notes that the applicant has not been charged with any crimes since her last conviction and the applicant's crime occurred more than 9 years ago, demonstrating the applicant's rehabilitation.

While the AAO does not condone her actions, the AAO finds that the favorable factors outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In discretionary matters, the applicant bears the full burden of proving her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the application is approved.