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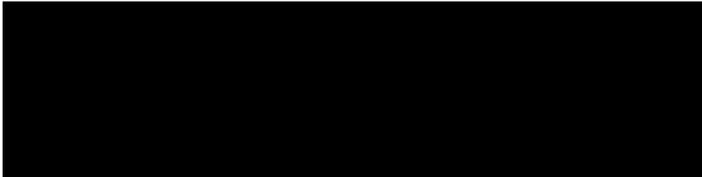
U.S. Department of Homeland Security
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U.S. Citizenship
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FILE:



Office: LOS ANGELES, CA

Date: JUN 14 2007

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 District Director, Los Angeles, California, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be sustained.

The applicant ([REDACTED]) is a native and citizen of Mexico 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 committed a crime involving moral turpitude. The applicant is the wife of a naturalized citizen husband ([REDACTED]) and the mother of U.S. citizen children. She seeks a waiver of inadmissibility under section 212(h) of the Act.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on qualifying relatives, and denied the Application for Waiver of Excludability (Form I-601). *Decision of the District Director*, dated September 19, 2005.

The AAO will first address the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act, U.S.C. § 1182(a)(2)(A)(i)(I).

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

(h) The Attorney General 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 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 reflects that the applicant has two petty theft criminal convictions that occurred in 1996. The district director correctly concluded that the convictions were for crimes involving moral turpitude. See *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973)(theft is a crime of moral turpitude).

The AAO will address the director's denial of the waiver application.

Section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission resulting from inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Only where there is great actual or prospective injury to the qualifying relative(s) will the bar be removed. "Extreme hardship" to an alien himself cannot be considered in determining eligibility for a section 212(h) waiver of inadmissibility. *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968).

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 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 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).

The AAO will now apply the *Cervantes-Gonzalez* factors to the present case to the extent they are relevant in determining extreme hardship to the applicant's husband and children. It is noted that extreme hardship to the applicant's qualifying relative must be established in the event that he or she accompanies the applicant; and in the alternative, that he or she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request. The qualifying relative here is the applicant's husband and children.

The record reflects the following. The applicant and petitioner have been married for 12 years. *License and Certificate of Marriage, County of Los Angeles, Registrar-Recorder*. The applicant and petitioner have two American-born children, [REDACTED] (born on April 17, 1990) and [REDACTED] (born on November 1, 2001). The applicant's youngest daughter has a speech/language impairment and attends daycare provided by DAS. The applicant provides at least one hour each day on her daughter's academic readiness skills. The applicant and her daughter take classes provided by DAS (developmental apraxia of speech). *Individualized Education Program, dated April 14, 2005*. The applicant helps her eldest daughter with her homework assignments. *Affidavit of Applicant, dated October 10, 2005*. The applicant's husband has diabetes and high blood pressure and the applicant takes care of his insulin injections and blood sugar monitoring. *Affidavit of Applicant's Husband, dated October 10, 2005*. He has been diagnosed with DMII WO CMP NT ST UNCNTR, Hyperlipidemia NEC/NOS, and Hypertension NOS. *Letter from* [REDACTED]

██████████ of the Los Angeles County Department of Health Services, dated October 13, 2005. The applicant's husband provides the family's income, earning \$51,516 in 2004, as a driver/sales representative. Letter from the applicant's husband, dated August 17, 2005; Federal Income Tax Records; letter form ██████████ dated January 24, 2005. The applicant cares for the children. Her husband cannot care for his daughters because he works about 70 hours each week and often travels out of the city. Letter from the Applicant's Husband, dated August 17, 2005.

The record establishes that the applicant's family would endure extreme economic hardship if the waiver of inadmissibility is denied and they were to remain in the United States without her.

The AAO acknowledges that it has been held that "the family and relationship between family members is of paramount importance" and that "separation of family members from one another is a serious matter requiring close and careful scrutiny. *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1423 (9th Cir. 1987) citing *Bastidas v. INS*, 609 F.2d 101 (3rd Cir. 1979).

Based on the evidentiary material submitted, the applicant provides daily care for her family. For her youngest daughter, who has a speech/language impairment and attends DAS day care, she provides at least one hour each day on her daughter's academic readiness skills. The applicant takes DAS classes at the same daycare as her daughter. Her daughter's impairment affects her ability to interact, to ask questions, to comment on her learning, and to seek help. Her expressive language and articulation is moderate to severely delayed. She demonstrates some of the characteristics typical of students who have an oral-motor and/or speech apraxia. *Individualized Education Program*, dated April 14, 2005. The record reflects that the applicant's husband is not available to assist his daughter in her academic readiness skills.

Given the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, the AAO finds that the hardship to the ██████████ family, particularly to five-year-old Viviana, rises to the level of "extreme" hardship if they were to remain in the United States without the support of the applicant.

Furthermore, the AAO finds that the totality of the record is sufficient to establish that the ██████████ family would suffer extreme hardship if they were to join the applicant in Mexico.

Courts in the United States have held that the consequences of deportation imposed on citizen children of school age must be considered in determining extreme hardship. For example, *In Re. Kao-Lin*, 23 I. & N. Dec. 45, 50 (BIA 2001), the BIA concluded that the language capabilities of the respondent's 15-year-old daughter were not sufficient for her to have an adequate transition to daily life in Taiwan; 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. In *Ramos v. INS*, 695 F.2d 181, 186 (5th Cir. 1983), the Circuit Court indicated that "imposing on grade school age citizen children, who have lived their entire lives in the United States, the alternatives of . . . separation from both parents or removal to a country of a vastly different culture where they do not speak the language," must be considered in determining whether "extreme hardship" has been shown. And, in *Prapavat vs. I.N.S.*, 638 F. 2nd 87, 89 (9th Cir. 1980) the Circuit Court found the BIA abused its discretion in concluding that extreme hardship had not been shown in light of fact that aliens' five-

year-old citizen daughter, who was attending school, would be uprooted from the country where she lived her entire life and taken to land whose language and culture were foreign to her.

The applicant has two American-born daughters who are of school age and have lived their entire lives in the United States. *Affidavit of [REDACTED], dated October 10, 2005.* Her youngest daughter has a learning disability and the eldest daughter is now 17 years old. Given the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, the AAO finds that the hardship to the [REDACTED] family, particularly in view of the adverse effect of moving from this country on the five-year-old girl, rises to the level of "extreme" hardship if the family were to join the applicant in Mexico.

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 an approved Form I-130 petition the extreme hardship to the applicant's spouse, and her U.S. citizen children, and the passage of nearly 10 years since the commission of the crimes. The unfavorable factors in this matter are the applicant's convictions for two crimes involving moral turpitude, her initial entry without inspection, and her illegal presence in the United States. The AAO notes that the applicant does not appear to have committed any other crimes.

While the AAO cannot emphasize enough the seriousness with which it regards the applicant's convictions for crimes involving moral turpitude, her convictions are at least partially diminished by the fact that nearly 10 years have elapsed since the commission of the crimes. The AAO finds that the hardship imposed on the applicant's family 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), 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.