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[Redacted]

FILE:

[Redacted]

Office: BALTIMORE, MARYLAND

Date: JUL 11 2008

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Peru 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 married to a lawful permanent resident of the United States citizen. 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 husband and children.

The 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 District Director*, dated January 5, 2006.

On appeal, the applicant, through counsel, asserts that the applicant's husband "would suffer 'extreme hardship' should she be deported. Furthermore, [the applicant] has recently learned that her daughter, USC, requires eye surgery and would suffer 'extreme hardship' should she be deported." *Form I-290B*, filed February 8, 2006.

The record includes, but is not limited to, counsel's brief, affidavits from the applicant and her husband, a psychological assessment on the applicant's husband, a letter from [REDACTED] regarding the applicant's daughter's medical condition, letters of recommendation from the applicant's friends and family, and the criminal court disposition from the District Court of Maryland for Montgomery County. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on May 1, 2003, the applicant was convicted of theft, by a judge in the District Court of Maryland for Montgomery County, and was sentenced to sixty (60) days in jail and 359 days probation.

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] 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 Attorney General [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 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...

In the present application, the record indicates that the applicant entered the United States on December 11, 2000 on a B-2 nonimmigrant visa, with authorization to remain in the United States until June 10, 2001. On January 16, 2003, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On February 6, 2003, the Montgomery County police arrested the applicant for theft. On February 18, 2003, an Immigrant Petition for Alien Worker (Form I-140) was filed on behalf of the applicant's husband. On May 1, 2003, a judge in the District Court of Maryland for Montgomery County convicted the applicant of theft, and sentenced her to sixty (60) days in jail and 359 days probation. On December 9, 2003, the applicant's husband Form I-140 was approved. On March 23, 2004, the applicant's theft conviction was expunged from her record. On May 19, 2005, the applicant filed a Form I-601. On January 5, 2006, the District Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relatives.

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 spouse and 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 (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 states that the applicant "has a prior conviction of theft for under \$500 value, which was subsequently expunged." *Appeal Brief*, filed March 8, 2006; *see also Order for Expungement of Police and Court Records*, dated March 23, 2004. The AAO notes that the applicant successfully completed her probation and community service and the theft charge was expunged; however, 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 May 1, 2003, after the applicant pled guilty to theft, a judge found her guilty of this charge, and sentenced her to suspended jail sentence and probation. *See Defendant Trial Summary*, dated May 1, 2003. The AAO notes that the applicant was found guilty of theft and was ordered to some form of punishment, and she is clearly inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The applicant's husband states that he "would suffer greatly if [the applicant] were to return to Peru." *Affidavit of* [REDACTED] dated May 11, 2005. Ms. [REDACTED] states the applicant's husband "shows signs of both depression and anxiety." *Psychological Assessment by* [REDACTED], LCSW-C, *Psychiatric Social Worker*, dated May 13, 2005. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted psychological assessment is based on one interview between the applicant's spouse and the psychiatric social worker. There was no evidence submitted establishing an ongoing relationship between [REDACTED] and the applicant's spouse. Moreover, the conclusions reached in the submitted assessment, being based on one interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychiatric social worker, thereby rendering the psychiatric social worker's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. *See Psychological Assessment by* [REDACTED], LCSW-C, *Psychiatric Social Worker, supra*.

The applicant's husband states the applicant "is a very loving and responsible mother with [their] children. She is a hard worker, she prepares all [their] food and takes care of [their] home...[The applicant] is a wonderful mother who helps the children with their homework, teaches them how to ride a bike, works in the garden with them, puts them to bed every night, and they love her for that." *Id.* The applicant states she is "a loving mother who places the needs of her children before anything else in this world." *Affidavit of* [REDACTED] dated May 11, 2006. Counsel states the applicant's daughter "may require eye surgery...and that recovery without complications could take 6-8 weeks alone, if the problem is truly corrected. Continued attention to their daughter, [REDACTED]'s eyesight and care, should she have to go through the surgery, would require additional care and attention on the part of her parents." *Appeal Brief, supra*. The AAO notes that Dr. [REDACTED] diagnosed the applicant's daughter with exotropia and astigmatism of her left eye, and she recommended that the applicant and her husband patch their daughter's "right eye to improve the vision in the left eye." *Letter from* [REDACTED], *Pediatric Ophthalmology, Kaiser Permanente*, dated March 1, 2006. [REDACTED] encouraged the applicant's husband to "patch [their daughter's] right eye everyday for 2 hours"; however, "[t]hey have been patching maybe once a week for an hour. [She has] advised patching again

everyday for 2 hours for the next month at which time [she] will schedule strabismus surgery...Recovery after surgery is 6-8 weeks without unforeseen complications.” *Id.* The record fails to establish that the applicant has to remain in the United States to provide assistance to her daughter. Further, the AAO notes that there was no documentation submitted establishing that the applicant’s daughter could not receive treatment for her medical condition in Peru, and there is no indication that the applicant’s daughter has to remain in the United States to receive her medical treatment. The AAO notes that it has not been established that the applicant’s children, who are 9 and 15 years old, and natives of Peru, would have difficulties rising to the level of extreme hardship in adjusting to the culture of Peru. The AAO notes that the applicant’s husband made no claim that he could not join the applicant in Peru, and it has not been established that he has no transferable skills that would aid him in obtaining a job in Peru. Additionally, the AAO notes that the applicant’s husband’s siblings and parents reside in Peru. The AAO finds that the applicant failed to establish that her husband and children would suffer extreme hardship if they joined the applicant in Peru.

In addition, counsel does not establish extreme hardship to her husband and children if they remain in the United States. The applicant’s husband states their children “would not return with [the applicant] since the opportunities in this country, in which they are legal permanent residents, are better than those in Peru. If they would return with [the applicant], they would be denied the opportunities they obtain here in the school they attend and with the friends they have made.” *Affidavit of J. [REDACTED], supra.* As lawful permanent residents of the United States, the applicant’s husband and children are not required to reside outside of the United States as a result of denial of the applicant’s waiver request. The applicant’s husband states if the applicant “were to return to Peru [he] would have to sell the house and transportation since [he] would not be able to afford the expenses on [his] own. [He] would probably have to take on another job and take on the additional expense of hiring someone to watch the children.” *Id.* However, the record fails to demonstrate that the applicant will be unable to contribute to her family’s financial wellbeing from a location outside of the United States. Additionally, the applicant’s husband can maintain his employment in the United States to help with the household expenses. The applicant’s husband states the applicant “could face problems finding work since it is difficult to find employment [in Peru].” *Affidavit of [REDACTED], supra.* As stated above, hardship the alien herself experiences upon removal is irrelevant to section 212(h) waiver proceedings. 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 husband and children 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 spouse and children 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.