

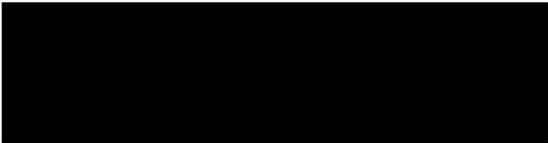
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**JUL 16 2008**

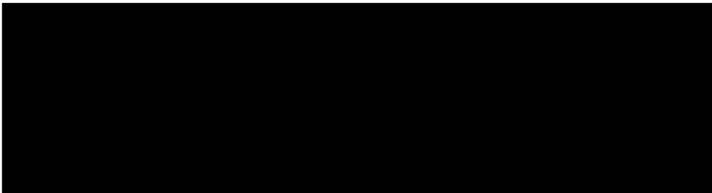
IN RE:

Applicant:



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 Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the District Director, Boston, Massachusetts. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the Form I-601 will be denied.

The applicant is a native and citizen of Haiti 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 applicant seeks a waiver of her ground of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h).<sup>1</sup>

The district director found the applicant had failed to establish that a qualifying family member would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601 was denied accordingly.

On appeal the applicant indicates, through counsel, that the district director did not properly analyze her extreme hardship claim, and the applicant asserts that the evidence in the record establishes her father would suffer extreme hardship if she were unable to remain near him in the United States.

Section 212(a)(2)(A)(i) of the Act provides in pertinent part that:

[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.

Criminal record evidence contained in the record reflects that on August 23, 1996, the applicant was convicted of Fraudulent Use of a Credit card, in violation of Florida Crimes Code section 817.61, and of Grand Theft in violation of Florida Crimes Code section 812.014(2)(c). She was sentenced to 180 days in jail.

Florida Crimes Code section 817.61 states:

Fraudulent use of credit cards.--A person who, with intent to defraud the issuer or a person or organization providing money, goods, services, or anything else of value or any other person, uses, for the purpose of obtaining money, goods, services, or anything else of value, a credit card obtained or retained in violation of this part or a credit card which he or she knows is forged, or who obtains money, goods, services, or anything else of value by representing, without the consent of the cardholder, that he or she is the holder of a specified card or by representing that he or she is the holder of a card and such card has not in fact been issued violates this section. A person who, in any 6-month period, uses a credit card in violation of this section two or fewer times, or obtains money, goods, services, or anything else in

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<sup>1</sup> It is noted that the district director mistakenly refers to a section 212(i) of the Act, 8 U.S.C. § 1182(i), waiver of inadmissibility in his decision.

violation of this section the value of which is less than \$100, is subject to the penalties set forth in s. 817.67(1). A person who, in any 6-month period, uses a credit card in violation of this section more than two times, or obtains money, goods, services, or anything else in violation of this section the value of which is \$100 or more, is subject to the penalties set forth in s. 817.67(2).

Florida Crimes Code section 817.67 provides that:

- (1) A person who is subject to the penalties of this subsection shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.
- (2) A person who is subject to the penalties of this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Florida Crimes Code section 812.014 provides in pertinent part that:

- (1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:
  - (a) Deprive the other person of a right to the property or a benefit from the property.
  - (b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.
- ....
- (2)(c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is. . . :
  2. Valued at \$5,000 or more, but less than \$10,000.

Florida Crimes Code section 775.082 provides in pertinent part that:

- (2) A person who has been convicted of any other designated felony may be punished as follows . . .
  - (d) For a felony of the third degree, by a term of imprisonment not exceeding 5 years.

A review of the crimes committed by the applicant reflect that they qualify as crimes involving moral turpitude. The Board of Immigration Appeals (Board) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992) that:

[I]n determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. . . .

Each offense committed by the applicant contains an element of knowing or intentional corrupt conduct. Furthermore, both illegal use of a credit card and grand theft have specifically been found to be crimes involving moral turpitude. See *Matter of Chouinard*, 11 I&N Dec. 839 (BIA 1966) and *Matter of Chen*, 10 I&N Dec. 671 (BIA 1964.) The applicant is thus inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Section 212(a)(2)(A)(2)(ii) of the Act, 8 U.S.C. § 1182(a)(2)(A)(2)(ii) provides in pertinent part:

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

...

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

In the present matter, the applicant was convicted of more than one crime involving moral turpitude. Additionally, the crimes for which the applicant was convicted were third degree felonies, punishable by up to five years of imprisonment. The exception contained in section 212(a)(2)(A)(ii)(II) of the Act therefore does not apply to the present case.

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

The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2)

(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 . . . .

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.

Evidence in the record reflects that the applicant has three U.S. citizen children, and that the applicant's father is a U.S. lawful permanent resident.<sup>2</sup> The applicant's children and father are qualifying family members for section 212(h) of the Act, waiver of inadmissibility purposes.

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<sup>2</sup> The district director's decision indicates that the applicant's father is now a naturalized U.S. citizen.

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 deemed relevant in determining whether an alien has established extreme hardship. 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 Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

U.S. 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 (9<sup>th</sup> Cir. 1991). In *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the U.S. Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court of Appeals emphasized that the common results of deportation are insufficient to prove extreme hardship.

The record contains the following evidence relating to the applicant's extreme hardship claim:

Copies of three birth certificates reflecting that the applicant has the following children:

██████████, born in Florida on July 15, 1993 (15 years old); ██████████, born in Connecticut on January 2, 1996 (12 years old); and ██████████, born in Connecticut on January 3, 1998 (10 years old.)

A copy of a U.S. Resident Alien card reflecting that the applicant's father, ██████████, became a lawful permanent resident on June 11, 1987.

The record contains no other evidence relating to the applicant's extreme hardship claim.

In a brief submitted on appeal, counsel for the applicant asserts that the applicant has four children, two of whom are U.S. citizens. Counsel asserts that the applicant's father (██████████) recently became a naturalized U.S. citizen, and that he is "retired and is living on borrowed time." Counsel indicates that Mr. ██████████ has had two heart attacks, and that he suffers from hypertension, and relies on the applicant's daily visits to survive. Counsel asserts that the applicant cleans her father's house, and that she drives him to doctor appointments, and helps pay his medical insurance. Counsel indicates further that if the applicant were forced to return to Haiti, her father, "would not be able to remain living in his home and independently."

It is noted that going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The unsupported assertions of counsel do not constitute evidence. Without documentary evidence to support a claim, the assertions of counsel will not satisfy the applicant's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533,

534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In the present matter, the record contains no evidence to corroborate or support the assertions made by counsel regarding the applicant and her father. Accordingly, the AAO shall not take the assertions of counsel into account when assessing the applicant's extreme hardship claim.

The AAO has reviewed the evidence contained in the record. Upon review of the evidence, the AAO finds that the applicant has failed to demonstrate that her children or father would suffer hardship beyond that which is normally expected upon the removal of a family member, if the applicant were denied admission into the United States. The record contains no evidence to indicate or establish that the applicant's children would suffer any hardship in the U.S., or in Haiti, if the applicant were denied admission into the United States. The record additionally contains no evidence to indicate or establish that [REDACTED] would suffer extreme hardship if he moved to Haiti with the applicant, or if he remained in the U.S. without her. The applicant provided no evidence to establish that [REDACTED] suffers from bad health, or to establish that he relies on the applicant in order to remain living in his home and independently. The record also contains no evidence to demonstrate that [REDACTED] relies on applicant's financial help. Moreover, the AAO notes that, "[t]he 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.) The Board additionally held in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), that emotional hardship caused by severing family and community ties is a common result of deportation. The U.S. Ninth Circuit Court of Appeals held further in *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9<sup>th</sup> Cir. 1986), that hardship involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, did not rise to the level of extreme hardship.

Having found that the applicant is ineligible for relief, the AAO notes no purpose in addressing whether the applicant merits a waiver as a matter of discretion.

Section 291 of the Act provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to meet her burden in the present matter. The appeal will therefore be dismissed, and the Form I-601 application will be denied.

**ORDER:** The appeal is dismissed. The application is denied.