



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

H2

FILE:

Office: NEW YORK, NEW YORK

Date MAR 24 2008

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 Interim Director for the New York District Office 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 Jamaica who was found inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i), for committing a crime of moral turpitude. The applicant is married to a naturalized citizen of the United States and is the mother of U.S. citizen children and a U.S. citizen step-daughter. The applicant sought a waiver of inadmissibility under section 212(h) of the Act, which the Interim Director denied, finding that the applicant's convictions and arrests cannot be waived under section 212(h). *Decision of the Interim Director*, dated April 20, 2005.

The AAO will first address the finding of inadmissibility.

Section 212(a)(2) of the Act states 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 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines "conviction" for immigration purposes as:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

The record reflects that the applicant has two criminal convictions. In 1990 the applicant pled guilty to larceny 1st degree in violation of CGS/PA No: 53a-122; and in 1999 she pled guilty to petit larceny, a class A misdemeanor, and was sentenced to 3 years probation and ordered to pay restitution.

The applicant's convictions involve moral turpitude. In *Da Rosa Silva v. INS*, 263 F. Supp. 2d 1005, 1010-12 (E.D. Pa. 2003), a case involving a shoplifting conviction, the court states:

"It is well settled as a matter of law that the crime of larceny is one involving moral turpitude regardless of the value of that which is stolen." *Quilodran-Brau v. Holland*, 232 F.2d 183, 184 (3d Cir.1956); *see e.g., Zgodda v. Holland*, 184 F.Supp. 847, 850 (E.D.Pa.1960)(larceny of small sum of money and personal apparel during Nazi regime in Germany involves moral turpitude); *Tillinghast v. Edmead*, 31 F.2d 81 (1st Cir.1929)(larceny of fifteen dollars

involves moral turpitude); *Wilson v. Carr*, 41 F.2d 704 (9th Cir. 1930) (petit larceny involves moral turpitude); *Pino v. Nicolls*, 215 F.2d 237 (1st Cir. 1954) (larceny of dozen golf balls involves moral turpitude), reversed on other grounds, *Pino v. Landon*, 349 U.S. 901, 75 S.Ct. 576, 99 L.Ed. 1239 (1955); *United States ex rel. Ventura v. Shaughnessy*, 219 F.2d 249 (2d Cir. 1955) (larceny of two sacks of cornmeal involves moral turpitude); see also, *Wong v. INS*, 980 F.2d 721, 1992 WL 358913, at \*5, n. 5 (1st Cir. 1992) (citing cases finding that a shoplifting offense is a crime involving moral turpitude). Under these interpretations, the crime of shoplifting is a larceny that involves moral turpitude.

*Id.* at 1010-12

Based on the evidence in the record and the well-settled finding by courts that larceny qualifies as a crime of moral turpitude, the AAO finds that the applicant's criminal convictions qualify as crimes of moral turpitude, rendering her inadmissible under section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i).

The AAO will now discuss a waiver of inadmissibility under section 212(h) of the Act.

Contrary to the Interim Director's finding, a waiver of inadmissibility is available to the applicant. Section 212(h) of the Act provides, in pertinent part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

...

(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 . . .

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The waiver application indicates that the applicant's qualifying relative are her naturalized U.S. citizen husband and her three U.S. citizen children. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

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).

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the qualifying relative must be established in the event that the qualifying relative joins the applicant; and in the alternative, that the qualifying relative 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 record contains affidavits; employment letters; a marriage certificate; birth certificates; messages from Tennablk; health insurance invoices; a letter by [REDACTED], LCSW, of Safe Space; a letter by Ms. [REDACTED] principle of The Langston Hughes School; criminal records; a lease agreement; and other documents.

In the affidavit dated June 9, 2005, [REDACTED] states that from 1987 to 1997 her husband was physically abusive towards her and that he moved out of their residence in 2004. She states that she now lives with her three children, who no longer have to witness their father's abusive behavior. [REDACTED] states that her children have suffered emotional trauma because of the abuse and would continue to suffer emotional harm if they lived with their father. She conveys that her eldest daughter, [REDACTED], has had therapy and her youngest child, [REDACTED], has exhibited behavioral problems at school.

The January 17, 2005 letter from [REDACTED] indicates that [REDACTED] has been employed by Sands Point Center for Health and Rehabilitation since December 12, 2000 as a certified nursing assistant, earning \$524.79 each week.

The May 16, 2005 letter from [REDACTED] of Safe Space states that [REDACTED] accompanied her daughter, [REDACTED] to treatment at the clinic due to the family experiencing domestic violence. [REDACTED] states that [REDACTED] acknowledged that her daughter has had depression due to the violence in the home, and that [REDACTED] acknowledged that her children cannot continue to be exposed to it. [REDACTED] states that [REDACTED] needs to provide a safe environment for herself and her children. [REDACTED] conveys that the treatment completed in December 2004 shortly after [REDACTED] moved out of the family home. She conveys that [REDACTED] and her children continue to re-build their relationship and from all indication they will do well providing the violence and exposure to violence discontinue."

The May 26, 2005 letter from [REDACTED] principle at The Langston Hughes School, states that [REDACTED] is in the fifth grade at the school and that during the school year he expressed that he was having difficulty with anger stemming from problems at home. [REDACTED] states that "[t]he school feels he would benefit from counseling to address his concerns."

The invoices in the record show that [REDACTED] was a patient at a psychiatric facility.

The applicant establishes that her children would experience extreme hardship if they remained in the United States without her.

The documentation in the record reflects that [REDACTED] children have been exposed to domestic violence at home and that [REDACTED] removed them from that environment for their well-being. The record before the AAO is therefore sufficient to show that [REDACTED] children and step-daughter would experience extreme emotional hardship if they remained in the United States without her care.

The applicant establishes that her children would experience extreme hardship if they joined her to live in Jamaica.

Because [REDACTED]'s children have witnessed domestic violence in their home, and because the record suggests that they may require stability and may require further therapy with Safe Space, the AAO finds that the applicant's children would experience extreme hardship if they joined her in Jamaica.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 212(h) of the Act, 8 U.S.C. § 1182(h).

The grant or denial of the above waiver does not 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 the extreme hardship to the applicant's children, her steady employment, and the passage of eight years since the 1999 conviction. The unfavorable factors in this matter are the applicant's criminal convictions and periods of unauthorized presence. The AAO notes that the applicant does not appear to have committed any crimes since 1999.

While the AAO cannot emphasize enough the seriousness with which it regards the applicant's criminal convictions, it finds that the hardship imposed on the applicant's children 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) of the Act, the burden of proving eligibility 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.