

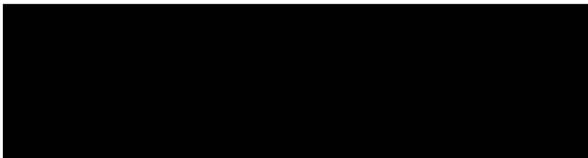
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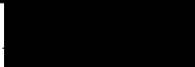
U.S. Citizenship
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FILE:



Office: NEWARK NJ

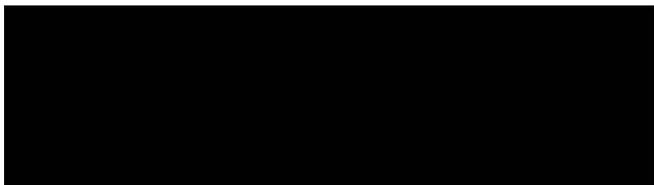
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IN RE:



APPLICATION: Motion to Reopen/Reconsider Denial of I-601 Waiver of Grounds of Excludability

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark, New Jersey. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be dismissed and the application denied.

The applicant is a native and citizen of Ecuador 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, and under section 212(a)(6)(C)(i) of the Act, § 1182(a)(6)(C)(i), for having entered the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband and daughter in the United States.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated January 16, 2002. The AAO dismissed the appeal. *Decision of the AAO*, dated September 17, 2002.

The instant motion to reopen and reconsider submits new evidence from a psychologist addressing the mental health of the applicant, her husband, and their daughter. In addition, the applicant asserts that the AAO's September 17, 2002 decision incorrectly found that she was convicted twice for shoplifting in 1992, and that it erred in failing to find the requisite hardship. Furthermore, the applicant challenges the finding that she is inadmissible based on fraud or misrepresentation, claiming she was never asked whether she had prior convictions or whether she had been previously employed in the United States. *Applicant's Motion to Reopen/Reconsider* at 3-10.

The record contains, *inter alia*: a copy of the marriage registration of the applicant and her husband, Mr. [REDACTED] indicating that they were married on March 24, 1995; affidavits and letters of support from the applicant's aunt, uncle, cousin, and friends; the Department of State's 1997 and 2000 Country Report on Human Rights Practices for Ecuador; articles and other background materials regarding country conditions in both Ecuador and Peru, where [REDACTED] was born; articles on depression and other mental health issues; a letter from [REDACTED]'s doctor; a letter from a pediatrician; a certification from the East Rutherford, New Jersey, Police Department stating that the applicant is "a resident in good standing"; criminal conviction documents; tax and financial documents; a copy of [REDACTED]'s naturalization certificate; and photos of the applicant with her family. The entire record was reviewed and considered in rendering this decision.

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 (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:

(h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (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 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, and counsel does not contest, that the applicant is inadmissible for having committed a crime involving moral turpitude. As counsel concedes, the applicant has been arrested and convicted several times. *Applicant's Motion to Reopen/Reconsider* at 6-7 (listing two arrests in 1992, one of which resulted in a violation; one arrest in 1993 which also resulted in a violation; and one arrest in 1995 which was a misdemeanor); *Application for Waiver of Grounds of Excludability (Form I-601)* (listing convictions for violating NY Penal Law § 240.20 (disorderly conduct) on March 27, 1992, and March 27, 1993, and 18 Pa.C.S.A. §§ 3929 (retail theft) and 3921 (theft by unlawful taking or disposition)). The record evidence shows that the applicant was arrested on February 11, 1992, and pled guilty to disorderly conduct, in violation of NY Penal Law § 240.20. See *Certificate of Disposition, Criminal Court of the City of New York, County of Queens*, dated March 27, 1992. Although the record shows that the applicant was arrested again on February 16, 1992, the charges were dismissed and the record sealed. *Criminal Court of the City of New York, Certificate of Disposition*, dated May 4, 1998. The record further shows that the applicant was arrested again in March 1995, and pled guilty to violating 18 Pa.C.S.A. §§ 3929 (retail theft) and 3921 (theft by unlawful taking or disposition). See *Criminal Complaint*, dated March 18, 1995.

Counsel contends in her motion that the AAO erred in its September 17, 2002 decision by finding that she was arrested in February and March 1992, and that she was convicted of shoplifting for both offenses. *Applicant's Motion to Reopen/Reconsider* at 7; *Decision of the AAO* at 7. Significantly, however, the applicant does not challenge that she is inadmissible for having been convicted of a crime involving moral turpitude. Indeed, the applicant's 1995 convictions for theft by unlawful taking or disposition and retail theft are crimes involving moral turpitude. See *Briseno-Flores v. Att'y Gen. of U.S.*, 492 F.3d 226, 228 (3d Cir. 2007) (guilty plea to petty theft was a crime involving moral turpitude) (citing *Quilodran-Brau v. Holland*, 232 F.2d 183, 184 (3d Cir. 1956) ("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"), and *Matter of Scarpulla*, 15 I&N Dec. 139, 140-41 (BIA 1974) ("It is well settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude")). The AAO's previous decision dismissed the applicant's appeal after finding that she failed to demonstrate the requisite hardship to a qualifying relative, not because she was convicted twice for shoplifting. Accordingly, any error was harmless.

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A) 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. *See* Section 212(h)(1)(B) of the Act, 8 U.S.C. § 1182(h)(1)(B). Hardship the alien herself experiences upon deportation is not a permissible consideration under the statute. *Id.* 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under the Act. These 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 applicant contends that she, her husband, and her daughter would suffer extreme hardship if her waiver application is denied. As stated above, hardship on the applicant herself is not a permissible consideration under the statute. *See* Section 212(h)(1)(B) of the Act, 8 U.S.C. § 1182(h)(1)(B). Therefore, only the hardship to the applicant's husband, [REDACTED] and their daughter, [REDACTED] will be evaluated.

[REDACTED] contends he would suffer extreme hardship if his wife's waiver application is denied because he depends on his wife to care for [REDACTED], to run their business selling antiques at the flea market, and to do all of the driving as he does not drive. *Psychological Evaluation*, dated September 30, 2002, at 3; *Affidavits of [REDACTED]*, dated October 7, 2002, and October 16, 2001; *Affidavit of [REDACTED]*, dated June 8, 2001. [REDACTED], who is from Peru and became a naturalized U.S. citizen in 1997, claims that he would be unable to go with his wife to Ecuador because he has no legal right to move there, is completely unfamiliar with the customs in Ecuador, and has no family or employment prospects there. *Affidavit of [REDACTED]*, dated October 7, 2002. [REDACTED], a bicycle courier, states that he has arthritis and a bilateral knee injury for which he receives medical attention and takes prescription medications. *Id.* He does not have medical insurance and fears being unable to receive comparable medical care in Ecuador. *Id.*

The applicant, [REDACTED] and [REDACTED] met with a psychologist on September 30, 2002. *Psychological Evaluation by [REDACTED]*, dated September 30, 2002. The psychological evaluation submitted with the motion to reopen and reconsider states that as a result of his intense fear that his wife may be deported, [REDACTED] has been suffering from a lack of motivation, poor energy, lack of sleep, poor concentration, and daily headaches. *Id.* at 3. The psychologist diagnosed him with major depression and generalized anxiety disorder. *Id.* at 4. The psychologist predicted that [REDACTED] "prognosis could be poor" and that he "could be facing clinical depression" if the applicant returned to Ecuador. *Id.* The psychologist further predicted that [REDACTED] "physical condition [presumably due to his knee injury] may worsen . . . [and that his] health could deteriorate and he could become totally disabled." *Id.* at 6.

█ claims she would suffer extreme hardship if the waiver request is denied because her mother is the most important person in her life, takes care of her, and is always there for her. *Letters from* █ dated September 30, 2002, and October 3, 2002. The applicant claims her daughter would be unable to move to Ecuador with her because of the “terrible social problems and violence” there, and because the quality of the educational system is extremely poor. *Affidavit of* █ *supra*. In addition, counsel contends that █ would be unable to move to Ecuador because the last time she was there, she developed a skin disease after being unable to adapt to the climate. *Brief in Support of Appeal* at 6. A letter from █ pediatrician stated that █ “was experiencing Hives and periodic lesions cause[d] by Pusy Skin Disease.” *Letter from* █ dated December 5, 2001.

The psychologist’s evaluation noted that █ felt despair and confusion, had problems with concentration, problems remembering her homework assignments, and problems sleeping. *Psychological Evaluation, supra*, at 4. The psychologist diagnosed █ with an “adjustment disorder with mixed anxiety and depression.” *Id.* The psychologist stated that “[i]f deportation occurs █’s prognosis will be poor,” and that she is “already fragile and vulnerable to severe environmental stressors such as her mother’s possible deportation.” *Id.* at 5. The psychologist predicted that if █ went to Ecuador with her mother, she would “face a difficult future in Ecuador,” and if she stayed in the United States without her mother, she “may have to face foster care if her father’s physical and mental health deteriorate.” *Id.*

It is not evident from the record that the applicant’s spouse would suffer extreme hardship as a result of the applicant’s waiver being denied. With respect to the applicant’s daughter, the evidence shows that although she would suffer extreme hardship if she moved to Ecuador, she has not shown extreme hardship should she remain in the United States.

█ is a forty-six year old man who has arthritis and a knee injury. The only medical documentation in the record is a letter from █ physician stating that █ has been treated for the past two years for a bilateral knee injury. *Letter from* █, dated September 27, 2002. The letter merely states that an X-ray would be taken in the next two weeks, and that “[t]he last treatment was today and the medication for the pain has been changed.” *Id.* The letter does not describe the exact nature or extent of the injury, what treatment entails, what the prognosis may be, or whether █ requires any family assistance. In addition, █ who does not have health insurance in the United States, has not shown that his knee injury could not be adequately treated in Ecuador. Furthermore, there is no record evidence addressing █’s arthritis. It is unclear how severe his arthritis may be, how it affects him, or whether he receives treatment or takes medication for it. Going on record without supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (BIA 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of a medical condition or the treatment and assistance needed.

Although the applicant and █ run a business together selling antiques at the flea market and the applicant does all of the driving, it is unclear whether or to what extent other family members may be able to assist █. The record shows that the applicant’s aunt picks up █ every Saturday and cares for her until Sunday while the couple works at the flea market. *Affidavit of* █ dated October 16,

2001. Given that [REDACTED] is now seventeen years old, it is unclear whether or to what extent she herself could assist with the flea market business, or whether the applicant's aunt, who had provided child care for [REDACTED] every weekend, may also be able to help. In any event, even assuming some economic hardship, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. See also *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

With respect to [REDACTED], court decisions have found extreme hardship in cases where the language capabilities of the children were insufficient for them to have an adequate transition to daily life in the applicant's country of origin. For example, in *Matter of Kao and Lin*, 23 I&N Dec. 45, 50 (BIA 2001), the Board of Immigration Appeals concluded that the language capabilities of the applicant's fifteen-year old daughter were insufficient for her to have an adequate transition to daily life in Taiwan. Because the girl had lived her entire life in the United States and was completely integrated into an American lifestyle, the Board found that uprooting her at this stage in her education and social development to survive in a Chinese-only environment constituted extreme hardship. *Matter of Kao and Lin, supra*. Similarly, in *Prapavat v. INS*, 638 F.2d 87, 89 (9th Cir. 1980), the Ninth Circuit found that the Board abused its discretion in concluding that extreme hardship had not been shown to the aliens' five-year old U.S. citizen daughter, who was attending school and would be uprooted from the country where she lived her entire life, and taken to a land whose language and culture were foreign to her. See also *Ramos v. INS*, 695 F.2d 181, 186 (5th Cir. 1983) ("imposing on grade school age citizen children, who have lived their entire lives in the United States, the alternatives of either prolonged and geographically extensive separation from both parents or removal to a country of a vastly different culture where they do not speak the language, is a matter which normally must be considered by the INS in its determination of whether 'extreme hardship' has been shown").

In the instant case, the AAO concludes that although [REDACTED] may suffer extreme hardship should she decide to go to Ecuador with her mother, the record does not warrant a finding of extreme hardship for [REDACTED] should she remain in the United States. Unlike the applicants' children in the above-mentioned cases, [REDACTED] is now seventeen years old, will soon finish high school, and will imminently become an adult. There is some indication in the record that she plans on attending a university or college in the United States. *Brief in Support of Appeal* at 5. The AAO recognizes that [REDACTED] and [REDACTED] 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 deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. See also *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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).

Regarding the psychological evaluation, although the input of any mental health professional is respected and valuable, the AAO notes that the evaluation in the record is based on a single interview the psychologist conducted with the applicant, [REDACTED] and [REDACTED] on September 30, 2002. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's husband or daughter. There is no evidence that there is a history of treatment for depression or an anxiety disorder for either the applicant's husband or daughter. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Indeed, the psychologist's predictions that if the applicant were deported, that [REDACTED] "could become totally disabled," and that the applicant's daughter "may have to face foster care" seem speculative and far-reaching. *Psychological Evaluation by [REDACTED] supra*, at 4, 6.

Finally, the applicant's challenge to her inadmissibility based on fraud or misrepresentation because she was allegedly never asked whether she had prior convictions or whether she had been previously employed in the United States, *Applicant's Motion to Reopen/Reconsider* at 10, does not change the outcome of the case. Even assuming she is not inadmissible for fraud or misrepresentation, as discussed above, she is inadmissible for having committed a crime involving moral turpitude. A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse or daughter 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)(6)(C) 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 motion is dismissed.