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Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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U.S. Citizenship
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FILE:

Office: BALTIMORE

Date: APR 02 2009

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Peru 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 been convicted of crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated September 19, 2006.

On appeal, counsel for the applicant contends that the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act. *Brief from Counsel*, dated November 17, 2006. Specifically, counsel asserts that the applicant's convictions were for crimes in furtherance of a single episode and thus they should be treated as a single offense under the "single scheme rule." *Brief from Counsel* at 1. Counsel asserts that, as the applicant has been convicted of the equivalent of only a single offense, her criminal activity falls under the "petty offense" exception and she is not inadmissible. *Id.* In the alternative, counsel asserts that the applicant has shown that her U.S. citizen husband and three U.S. citizen children will experience extreme hardship if the present waiver application is denied. *Brief from Counsel* at 2-3.

The record contains briefs from counsel; statements from the applicant and the applicant's husband, children, mother, sisters, and acquaintances; documentation relating to the applicant's children's education; copies of birth certificates for the applicant's children; a copy of the applicant's marriage certificate; a copy of the applicant's husband's naturalization certificate; documentation related to the applicant's criminal activity and court proceedings; copies of medical documents for the applicant's children and husband; reports on conditions in Peru; copies of a deed, banking, employment, and tax records for the applicant and her husband; a psychological evaluation for the applicant's family members, and; a copy of the applicant's passport. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

- (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 [now Secretary, Homeland Security, “Secretary”] may, in his discretion, waive the application of subparagraphs (A)(i)(I) [or] (B) . . . 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

- (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 [now the Secretary of Homeland Security (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

The record reflects that on February 10, 1997, the applicant pled guilty to three offenses, including: Petit Larceny under New York P.L. § 155.25; Criminal Possession of Stolen Property under New York P.L. § 165.40, and; Criminal Impersonation under New York P.L. § 190.25. The applicant was given a conditional discharge/surcharge and required to perform community service and pay fines. Accordingly, the applicant was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude.

Counsel asserts that, pursuant to the authority of *Matter of Pataki*, 15 I&N Dec. 324 (BIA 1975), the applicant’s convictions were for crimes in furtherance of a single episode and thus they should be treated as a single offense under the “single scheme rule.” *Brief from Counsel* at 1. However, in *Matter of Pataki*, the Board of Immigration Appeals (BIA) addressed whether an applicant’s criminal convictions were pursuant to a single criminal scheme for the purpose of determining deportability under section 241(a)(4) of the Act. *Matter of Pataki* at 324. The BIA did not identify a “single scheme rule” that applies in the context of determining inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. The applicant has not established that such a doctrine applies regarding an assessment of her criminal convictions in light of section 212(a)(2)(A)(i)(I) of the Act. It is further noted that the record lacks sufficient explanation or documentation to show the precise conduct for which the applicant was convicted, thus the applicant has not shown that her convictions arose from the same criminal act.

Based on the foregoing, the applicant has been convicted of multiple crimes involving moral turpitude. Therefore, she does not meet the “petty offense” exception found in section 212(a)(2)(A)(ii)(II) of the Act, and she is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

It is noted that the applicant is not eligible to be considered for a waiver under the standard set in section 212(h)(1)(A) of the Act, as 15 years have not passed since she committed the conduct that led to her convictions. Section 212(h)(1)(A)(i) of the Act.

Section 212(h)(1)(B) 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. Hardship the applicant experiences due to his inadmissibility is not a basis for a waiver under section 212(h) of the Act; the only relevant hardship in the present case is hardship suffered by the applicant’s U.S. citizen husband and children. *Id.* If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

On appeal, counsel asserts that the applicant has shown that her U.S. citizen husband and three U.S. citizen children will experience extreme hardship if the present waiver application is denied. *Brief from Counsel* at 2-3. Counsel states that the applicant’s husband is a continuous resident of the United States, and that he resides with the applicant and their three children, ages ten, six, and three, in a home that they own. *Id.* at 5. Counsel indicates that the applicant’s husband works two jobs, and that the applicant provides care for her children and works part-time in the homes of others. *Id.* at 5-6. Counsel provides that the applicant is a strong supporter of her children’s education, and that the children are having a positive educational experience in Rockville, Maryland. *Id.* at 6.

Counsel contends that the applicant and her husband do not have strong ties to Peru. *Id.* Counsel asserts that relocating to Peru would weaken the applicant’s ability to support and contribute to her family. *Id.*

Counsel states that the applicant’s husband is unable to work his two jobs while providing childcare for his three children. *Id.* Counsel notes that the applicant’s husband’s immediate family is not in the United States, and that he is unable to receive assistance from the applicant’s family. *Id.* Counsel asserts that the

applicant's children would suffer emotional hardship if separated from the applicant, as well as negative consequences for their social development and economic well-being. *Id.* at 7. Counsel states that the applicant and her husband lack adequate family ties in Peru to assist them should they relocate there. *Id.*

Counsel asserts that the applicant and her family members have close ties to their community, and that the applicant contributes to her children's schools. *Id.* at 8. Counsel indicates that the applicant's children would have fewer educational opportunities in Peru, as the applicant's family would be unable to afford a private English-language school. *Id.*

Counsel states that the applicant takes responsibility for her children's healthcare needs. *Id.* at 9. Counsel asserts that the applicant's husband has health issues related to asthma, and that he uses an inhaler. *Id.* Counsel indicates that the applicant's daughter, [REDACTED], has had three surgeries for a large non-malignant mole on her face, and that she requires more plastic surgery as well as growth hormone treatment due to her small stature. *Id.* Counsel explains that the applicant's son, [REDACTED] has significant long-term health problems, including asthma, a reactive airway disease, three polyps in his lungs, and bronchitis. *Id.* Counsel notes that the applicant's son will require future operations. *Id.* Counsel asserts that the applicant's husband is unable to manage the health needs of his children, and thus the applicant's children will suffer if the applicant is not present to assist them. *Id.* Counsel contends that the applicant's children would have limited access to healthcare in Peru. *Id.* at 10. Counsel further notes that the applicant's children's access to healthcare in the United States would be negatively impacted should the applicant's family lose the applicant's income. *Id.*

Counsel states that the applicant and her husband earn a combined income of approximately \$35,000 per year, which creates challenges for the family in meeting their economic needs. *Id.* at 11. Counsel suggests that the loss of the applicant's income would create hardship for the applicant's husband and children. *Id.*

The applicant's husband stated that he and the applicant's children will experience significant hardship should the applicant be compelled to depart the United States. *Statement from the Applicant's Husband*, dated April 6, 2005. The applicant's husband explained that he and his children are close with their relatives in the United States. *Id.* at 1. He stated that his son has had health problems, including an acute infection in his throat requiring surgery, and breathing problems due to nasal polyps that require surgery. *Id.* He provided that his daughter is having a facial birthmark removed in successive surgeries, and that she requires one more. *Id.* He indicated that the family obtains medical care with the assistance of their medical insurance. *Id.* He provided that his children would be unable to receive this care in Peru due to financial challenges. *Id.*

The applicant's husband asserted that the applicant would be unable to find a suitable job in Peru, as work for housekeepers does not provide adequate compensation to help meet the family's needs. *Id.* at 2. The applicant's husband stated that crime is prevalent in Peru, and that his 16-year-old niece was raped while visiting there. *Id.*

The applicant's husband indicated that his children would suffer hardship should they relocate to Peru with the applicant and be separated from him. *Id.* He explained that his children would lose the

benefits of education in the United States, and that they would encounter problems adapting to the educational system in Peru due to a lack of Spanish language skill. *Id.*

The applicant submitted numerous letters from individuals who attest to her care for her children and involvement with their schools.

The applicant provided medical records for her husband, daughter, and son. The records reflect that the applicant's son was scheduled for surgery on May 3, 2005, and that the applicant was designated to remain with him to observe for complications. *Letter from* [REDACTED] dated April 11, 2005.

The applicant provided an evaluation of her family conducted by a clinical psychologist, [REDACTED]. Dr. [REDACTED] indicated that she conducted an interview of the applicant's family. *Report from* [REDACTED] dated October 15, 2006. Dr. [REDACTED] recounted the applicant's family's history, and indicated that the applicant's family functions as a close unit. *Id.* at 2-4. She noted that the applicant's mother used to assist the family with childcare, but that she had back surgery and she requires physical therapy. *Id.* at 4. Dr. [REDACTED] expressed her opinion that the applicant's husband and children will endure emotional consequences should the applicant depart the United States, and that the family is experiencing distress regarding the applicant's immigration difficulties. *Id.* at 8-9.

Upon review, the applicant has established that a qualifying relative will experience extreme hardship if she is prohibited from remaining in the United States. It is noted that the applicant has four qualifying relatives whose hardship may serve as a basis for the present waiver application, namely her U.S. citizen husband and three U.S. citizen children. Section 212(h)(1)(B) of the Act. However, in order to establish eligibility for consideration for a waiver under section 212(h)(1)(B) of the Act, the applicant need only show that one of these relatives would suffer extreme hardship should she be compelled to depart the United States. The AAO finds that the applicant has shown that her daughter, [REDACTED] will experience extreme hardship should the present waiver application be denied. Thus, while the AAO acknowledges that denial of the present application would result in significant hardship to the applicant's husband and other two children, the following analysis will focus primarily on hardship to [REDACTED]

The record reflects that [REDACTED] has had three surgeries to remove a large non-malignant mole on her face, and that she requires more plastic surgery to alleviate scarring that has occurred due to the surgeries. [REDACTED] also requires growth hormone treatment due to her small stature. While [REDACTED] conditions appear to be largely cosmetic, the AAO acknowledges that physical attributes reasonably play a role in a child's emotional and social development. [REDACTED] noted that the applicant's family reported that children have given negative attention to [REDACTED] appearance. Thus, [REDACTED] would suffer hardship should she lose the opportunity to continue the medical treatment she receives in the United States.

The applicant has submitted reports to support that unemployment is high in Peru, suggesting that the applicant and her husband would face challenges in finding comparable work should they relocate there. Presently the applicant's family accesses medical care through their health coverage in the United States. Should they discontinue employment and relocate abroad, it is reasonable that [REDACTED] access to further medical procedures and treatment would be reduced if not eliminated.

Court decisions have found extreme hardship in cases where the language capabilities of the children were not sufficient for them to have an adequate transition to daily life in the applicant's country of origin. For example, *Matter of Kao and 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. The girl had lived her entire life in the United States and was completely integrated into an American life style, The BIA found that 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 stated 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. In *Prapavat v. INS*, 638 F. 2nd 87, 89 (9th Cir. 1980) the Ninth Circuit found the BIA abused its discretion in concluding that extreme hardship had not been shown to the aliens' five-year-old 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.

The record indicates that [REDACTED] has limited Spanish language ability. Should she relocate to Peru, she would be faced with significant challenges adapting to a new language and culture, particularly considering she would enter an unfamiliar school system while facing the challenge of physical differences that may distinguish her from other children.

It is evident that [REDACTED] would share in the emotional difficulty faced by the applicant and the applicant's husband should their plans and goals in the United States be disrupted, and should they be separated from their community and relatives. [REDACTED] noted that [REDACTED] is close with her maternal grandmother in the United States, thus it is reasonable that she would experience emotional hardship if separated from her.

The record contains numerous statements to show that the applicant plays an important role in [REDACTED] life, both at home and related to her school activities. As the applicant's husband works two jobs and the applicant works part-time, it is evident that the applicant is [REDACTED]'s primary care giver. The AAO acknowledges that, should the applicant relocate abroad and [REDACTED] remain in the United States, such separation would cause significant emotional hardship for [REDACTED]. Should the applicant depart and the applicant's husband and children remain behind, it is reasonable that their family would face financial strain due to the loss of the applicant's income. The possible need for childcare services would further strain the applicant's husband's household, which would have some impact on [REDACTED]

In order to establish extreme hardship, an applicant must distinguish hardship to her qualifying relative from that which is ordinarily expected when a family member is compelled to reside outside the United States due to inadmissibility. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In the present matter, [REDACTED] hardship can be distinguished from that ordinarily experienced by a child who faces the deportation of a parent due to her need for access to further medical services that may be disrupted should the applicant depart, and the added difficulty she would experience in adapting to life in Peru. All elements of hardship to [REDACTED] have been considered separately and in aggregate. Based on the foregoing, the applicant has shown by a preponderance of the evidence that denial of the present waiver

application would result in extreme hardship to [REDACTED] whether she remains in the United States or relocates abroad. Section 212(h)(1)(B) of the Act.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver of inadmissibility does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General (now Secretary of the Department of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. See *Matter of Cervantes-Gonzalez*, *supra*, at 12.

The negative factors in this case consist of the following:

The applicant pled guilty to three separate criminal offenses in 1997. The record suggests that the applicant entered the United States without inspection in or about 1994, and she remained for a lengthy duration without a legal status in violation of U.S. immigration law.

The positive factors in this case include:

The applicant has not been convicted of a crime since 1997; the applicant's three convictions arose due to the applicant's conduct on a single day, thus the record does not show that she has a pattern of criminal behavior; the applicant's U.S. citizen children and husband would experience hardship should she be compelled to depart the United States; the applicant plays an active role in her family and community; the applicant has expressed remorse for her criminal activity, and; the applicant has limited ties to Peru and she would experience hardship if relocating there.

While the applicant's criminal activity and violation of U.S. immigration law cannot be condoned, the positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden that she merits approval of his application.

ORDER: The appeal is sustained.