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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

tlz

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: APR 08 2009

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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of the Philippines, was found 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 is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with his wife and children in the United States.

The director concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the application accordingly. *Decision of the Director*, dated January 3, 2007.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED] indicating they were married on December 8, 1984; a copy of [REDACTED]'s Welcome Notice verifying she became a lawful permanent resident on December 20, 2006; letters from the applicant, [REDACTED], and their two sons; a letter from a Psychologist; copies of tax returns and other financial documentation, including a mortgage statement and student loan statements; a letter from the applicant's employer; and conviction documents. The entire record was reviewed and considered in rendering this decision on the appeal.

As an initial matter, the director correctly found that at the time of the applicant's waiver application, [REDACTED] was out of status. *Decision of the Director, supra; Application for Waiver of Grounds of Inadmissibility (Form I-601)* (listing [REDACTED] immigration status as "out-of-status"). The regulation at 8 C.F.R. 103.2(b)(1) requires that "[a]n applicant or petitioner must establish that he is eligible for the requested benefit *at the time of filing the application or petition.*" Therefore, because [REDACTED] was not a lawful permanent resident at the time the applicant filed his application, she is not a qualifying relative in the instant waiver application. Accordingly, as described below, only hardship to the applicant's U.S. citizen sons will be evaluated.

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:

- (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 shows that on February 21, 2002, the applicant was convicted of theft by deception in violation of N.J.S.A. § 2C-20-4 in the Superior Court of New Jersey, Morris County. He was sentenced to sixty days imprisonment and three years probation.

It is well established that theft is a crime involving moral turpitude and counsel does not argue otherwise. *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")). Therefore, the applicant is inadmissible under section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), for having committed a crime involving moral turpitude.

A section 212(h) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse, parent, son, or daughter of the applicant. *See* section 212(h) of the Act, 8 U.S.C. § 1182(h). 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-Morales*, 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 Board 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.

It is not evident from the record that the applicant's sons will suffer extreme hardship as a result of the applicant's waiver being denied.

In this case, the applicant's two U.S. citizen sons, [REDACTED] and [REDACTED] who are twenty-two and twenty-four years old respectively, state that they are full-time college students who depend on their father for financial, emotional, and physical support. *Affidavit of Hardship by [REDACTED]*, dated January 30, 2007; *Affidavit of Hardship by [REDACTED]*, dated January 29, 2007. They claim their father provides them with all of their basic needs, that they "suffer from significant psychological conditions," and that "[their] health and [their] future would be jeopardized if he were not allowed to remain in the United

States.” *Affidavit of Hardship by* [REDACTED] *supra*; *Affidavit of Hardship by* [REDACTED] *supra*. No documentation was provided regarding any financial assistance provided by the applicant.

A letter from a Psychologist in the record states that [REDACTED] has symptoms consistent with Major Depressive Disorder as he is extremely withdrawn and unable to concentrate on his studies. *Id.* The Psychologist states that [REDACTED] has “psychological symptoms, which are similar to those of his older brother.” *Letter from* [REDACTED], dated January 26, 2007. The Psychologist concludes that the applicant’s departure from the United States will force the applicant’s sons to depend on public assistance as they will be unable to work. *Id.* The psychologist did not explain how she determined that they would be unable to work or why they would need to depend on public assistance. Although the input of any mental health professional is respected and valuable, the AAO notes that the letter in the record does not indicate whether the Psychologist’s opinions were based on a single interview or whether there was ongoing counseling or treatment, or even whether she ever met with the sons. The AAO also notes that the letter did not indicate what tests, if any, the Psychologist used in reaching her conclusions, or whether the symptoms she listed were merely self-reported by the applicant’s sons. The lack of specifics regarding how the diagnoses were reached renders the psychologist’s findings speculative and diminishes the evaluation’s value to a determination of extreme hardship.

Further, the applicant’s sons do not discuss the possibility of moving to the Philippines to avoid the hardship of separation, and they do not address whether such a move would represent a hardship for them. Although the AAO notes that the Psychologist claims that [REDACTED] and [REDACTED] “have lived all of their lives in the United States,” *Letter from* [REDACTED] *supra*, none of the members of the [REDACTED] family make this assertion. In addition, it is unclear from the record whether [REDACTED] and [REDACTED] have ever traveled to the Philippines, whether the family has other relatives living in the Philippines, or whether they speak Filipino. Although the AAO is sympathetic to the family’s circumstances, there is insufficient record evidence to show that the applicant’s sons would suffer extreme hardship if they moved to the Philippines to avoid the hardship of separation from the applicant. Going on record without any 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)).

A review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative 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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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.