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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**

H2

FILE: [REDACTED] Office: CHICAGO, IL

Date: MAY 15 2009

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the
Immigration and Nationality Act (INA), 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

[REDACTED]

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, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of Mexico who was found to be 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 having been convicted of a crime involving moral turpitude. The applicant is married to a U.S. citizen 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 her husband in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated July 24, 2007.

On appeal, counsel contends that the district director failed to consider or give proper weight to the entirety of the evidence presented.

The record contains, *inter alia*: a copy of the marriage license of the applicant and her husband, Mr. [REDACTED] indicating they were married on December 23, 1997; an affidavit and a letter from Mr. [REDACTED] a letter from the applicant's physician confirming her pregnancy; letters from the applicant's and [REDACTED] employers; a copy of the couple's mortgage statement and bank account statement; copies of [REDACTED] medical records; tax documents; conviction documents; letters from Mr. [REDACTED] parents, grandparents, and other friends and family; and an approved Immigrant Petition for Alien Relative (I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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, or
- (II) A violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in Section 802 of Title 21),

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) of this section and subparagraph (A)(i)(II) of such subsection . . . 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 the applicant entered the United States without inspection in July 1989. The district director found, and counsel does not contest, that on August 14, 1992, and on March 28, 1996, the applicant was arrested for retail theft of merchandise worth less than \$150 and was convicted of both incidents on July 19, 1996. Therefore, the record shows that 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. *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")).

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. 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).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include: the presence of family ties to U.S. citizens or lawful permanent residents in the United States; family ties outside the United States; country conditions where the qualifying relative would relocate and family ties in that country; the financial impact of departure; and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

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). In addition, the Court of Appeals for the Ninth Circuit has held that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted); *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th Cir. 1981) (economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme) (citations omitted).

In this case, the applicant’s husband, [REDACTED], states that his wife is pregnant with their first child and that it is extremely important to him that their child grow up surrounded by family. [REDACTED], who was born in the United States, states that neither he nor the applicant have any family in Mexico. He contends he is extremely close with his parents, who live within walking distance, and his brother. Mr. [REDACTED] states that he speaks to or sees his parents every day. He also claims he is very close with both sets of his grandparents who would be unable to visit him in Mexico given their severe health problems. In addition, [REDACTED] has worked as an Engineering Technician for the same company since 1996 and claims that his education, training, and job experience are extremely specific. He fears he could not get employment in Mexico given his specific job skills, particularly since he cannot speak, read, or write in Spanish. [REDACTED] further contends he has allergy problems and has suffered extensive upper respiratory problems. He states that if he leaves his job to move to Mexico, he will lose his health insurance and his health would be jeopardized. [REDACTED] also states that he would suffer extreme financial hardship if he stayed in the United States without his wife. He describes how the couple’s monthly expenses amount to approximately \$4,400 per month, and that he brings home approximately \$2,600 per month while his wife brings home approximately \$1,800 per month.

Medical documentation in the record indicates [REDACTED] has had numerous doctor visits due to allergies and has received regular allergy shots since 1983. See also *Letter from [REDACTED] and [REDACTED]* dated August 18, 2006 [REDACTED]’s parents state that [REDACTED] was diagnosed with allergies to mold, mildew, animal dander, pollen, dust, plants, detergents, perfumes, fragrances, various products and certain foods, and has received weekly allergy shots for several years).

Considering all of the factors in the aggregate, the AAO finds that the physical, personal, emotional, and financial hardship that would result from the denial of a waiver of inadmissibility constitute

extreme hardship. The record shows that if the applicant were removed from the United States, Mr. [REDACTED] would be unable to afford paying his household expenses. According to the W-2 tax forms in the record, in 1998, the applicant earned a total of \$7,329 from two different employers and Mr. [REDACTED] earned \$44,783. In 1999, the applicant earned \$11,442 from two employers and the applicant earned \$46,468. In 2000, the applicant earned \$14,944 from two employers and the applicant earned \$54,133. In 2001, the applicant earned \$18,391 and the applicant earned \$73,000. Although Mr. [REDACTED] has consistently earned the majority of the couple's income, the applicant has continuously worked more than one job in order to financially contribute to the couple's household expenses. As [REDACTED] described in his affidavit, it is only with the couple's combined income that they are able to meet their monthly expenses.

The AAO also finds that it would constitute extreme hardship for [REDACTED] to go to Mexico to avoid the hardship of separation from his wife. [REDACTED] was born and raised in the United States, does not speak Spanish, and has extensive family in Illinois, including his parents with whom he has daily contact, his grandparents, and his brother. Many of his family members would be unable to travel to Mexico to visit [REDACTED] given serious health problems. In addition, [REDACTED] has worked as an Engineering Technician for the same company for over thirteen years, a job with very specific, technical skills, and may not be able to find employment in Mexico, particularly considering he does not speak Spanish. Furthermore, the record shows [REDACTED] has had a lengthy medical history involving weekly allergy shots. If he moved to Mexico, he would lose the health insurance he currently receives with his job and would sever the relationship he has built over the years with his doctor. Based on these factors, the hardship [REDACTED] would experience if his wife were refused admission is extreme, going well beyond those hardships ordinarily associated with removal. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the applicant bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant's two convictions for retail theft and her unlawful entry into the United States and periods of unauthorized presence. The favorable and mitigating factors in the present case include: the applicant's family ties to the United States, including her U.S. citizen husband and his family; the extreme hardship to the applicant's husband if she were refused admission; letters of support describing the applicant as "an honest, hard working, caring and thoughtful person," *Letter from* [REDACTED], undated, and "a wonderful person who shows compassion and caring [and who is] extremely thoughtful [and] responsible," *Letter from* [REDACTED] and [REDACTED] dated February 27, 2005; the applicant's history of working and paying taxes in the United States; a letter from one of the applicant's employers stating that she "has consistently shown herself to be a conscientious and valuable employee earning the respect of the management staff and of the restaurant crew," *Letter from* [REDACTED], dated February 25, 2005; and the applicant's lack of any additional criminal convictions for the past thirteen years.

The AAO finds that, although the applicant's immigration violation and criminal history are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.