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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

[REDACTED]

FILE: [REDACTED] Office: [REDACTED] Date: **AUG 10 2010**

IN RE: [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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

[REDACTED]
[REDACTED]
[REDACTED]
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Santo Domingo, Dominican Republic and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Dominican Republic 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 a crime involving moral turpitude. The applicant is the daughter of a lawful permanent resident. She seeks a waiver of inadmissibility in order to reside with her mother in the United States.

The Acting Field Office Director found that the applicant had failed to establish that the bar to her admission would result in extreme hardship to a qualifying relative, her lawful permanent resident mother. He denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Acting Field Office Director*, dated August 20, 2009.

On appeal, the applicant states that her mother is sick and old, and that one of her mother's dreams is to see the applicant, her youngest daughter, come to the United States. *Form I-290B, Notice of Appeal or Motion*, filed September 17, 2009.

In support of the waiver, the record includes, but is not limited to, a statement from the applicant's mother, a medical record for the applicant's mother, a psychological evaluation of the applicant, and translated documents relating to the applicant's criminal history. The entire record was reviewed and considered in reaching a decision in this matter.

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) states in pertinent part that:

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

(1)(A) [I]t is established to the satisfaction of the Attorney General that-

(i) [T]he 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

(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 indicates that, in 2002, the applicant was convicted as an accomplice in a robbery with violence under Articles 59, 60, 379 and 382 of the Dominican Penal Code and sentenced to two years in prison. Documentation in the record also establishes that, in 2005, the applicant was convicted in connection with a public sex act and was imprisoned for several weeks.

On appeal, the applicant states that it is difficult for her to explain a case that was not her fault. She does not, however, indicate what she means by her statement or expand upon it. In that the record establishes that the applicant has been convicted of robbery, the AAO finds the applicant to be inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude.¹ *Matter of Martin*, 18 I&N Dec. 226 (BIA 1982).

As less than 15 years have passed since the events that resulted in the applicant's 2002 conviction for robbery, she is statutorily ineligible for a waiver of admissibility under section 212(h)(1)(A) of the Act. She may, however, seek a waiver pursuant to section 212(h)(1)(B) of the Act, which is dependent first upon a showing that the bar would impose an extreme hardship on a qualifying family member, in this case, the applicant's mother. Hardship experienced by the applicant as a result of her inadmissibility will not be considered in this proceeding unless it would cause hardship to her mother. Should extreme hardship be 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 Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to this country; the qualifying

¹ The AAO notes that the consular officer who conducted the applicant's visa interview also found her to be inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to conceal her criminal convictions. The AAO will not, however, consider whether the applicant, at the time of her interview, sought a benefit under the Act by fraud or the willful misrepresentation of a material fact. Should the applicant establish extreme hardship to her mother under section 212(h) of the Act, any potential inadmissibility under section 212(a)(6)(C)(i) of the Act will be also be waived.

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.

In determining extreme hardship, the AAO considers hardship to the qualifying relative(s) in the country of relocation and in the United States, as the qualifying relative(s) is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider all relevant factors in the adjudication of this case.

The applicant needs to establish that her mother would suffer extreme hardship if she were to join her in the Dominican Republic. The applicant, however, does not claim that her mother, a native of the Dominican Republic, would experience hardship upon relocation. Accordingly, the AAO is unable to conclude that the applicant's mother would suffer extreme hardship if she moved to the Dominican Republic.

The AAO also finds the record to lack sufficient evidence to demonstrate that the applicant's mother would experience extreme hardship if she continued to reside in the United States. In an undated statement, the applicant's mother states that her separation from her daughter is painful for her, and that she is experiencing constant depression and anxiety. A patient summary for the applicant's mother, issued by the Heights Physicians Group PC, reports that during 2008-2009 the applicant's mother was diagnosed with a number of chronic health problems, including Carpal Tunnel Syndrome; hypertensive heart disease, unspecified; joint pain, multiple joints; lumbago, lumbosacral neuritis, unspecified; osteoarthritis, multiple sites, unspecified; osteoporosis; PAD—Peripheral Vascular Disease, unspecified; undiagnosed cardiac murmurs; benign paroxysmal vertigo; tinnitus, unspecified; insomnia, unspecified; URTI—Acute URI, unspecified; acute bronchitis; acute pharyngitis; spasm of muscle; acute pain and degeneration of the lumbar or lumbosacral spine. The summary also states that the applicant's mother requires constant care as she is at risk for total disability and that she is developing major depression secondary to her chronic conditions. The applicant's mother has been prescribed ibuprofen, Lotrel, Meloxicam and Peridex Oral Rinse.

While the AAO acknowledges the above health problems, it does not find the record to establish that the applicant's continued inadmissibility would result in medical hardship for her mother. The report from the Heights Physicians Group indicates that the applicant's mother requires constant care, but there is no indication in the record that she is not receiving this care in the applicant's absence. The record also fails to indicate that the applicant's mother, who appears to have health insurance, is unable to afford the medical treatment she requires. The AAO further notes that the applicant's mother has two adult children who live in the United States and the record does not demonstrate that they are unwilling or unable to provide whatever care their mother needs.

The applicant's mother states that she is constantly depressed and anxious because of her separation from her youngest daughter. Although the Heights Physicians Group's report indicates that the applicant's mother may be developing major depression as a result of her chronic medical

conditions, this brief statement does not provide the medical detail and analysis necessary to establish the applicant's mother's mental/emotional state. Moreover, it fails to support the applicant's mother's claim that she is depressed as a result of her separation from her daughter.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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. *Hassan v. INS*, *supra*, held further that the 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. The AAO recognizes that the applicant's mother will endure hardship if the applicant's waiver request is denied. However, the record does not distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of exclusion. Accordingly, it does not establish that the hardship experienced by the applicant's mother would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her mother if she continues to reside in the United States.

As the record has failed to establish that the applicant's mother would experience extreme hardship as a result of the applicant's inadmissibility to the United States, the applicant is not eligible for a waiver under section 212(h) of the Act. 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(h) 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 appeal is dismissed.