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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
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FILE:

Office: CHICAGO, IL

Date: MAR 01 2010

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the
Immigration and Nationality Act, 8 U.S.C. section 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, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew

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 dismissed.

The applicant is a native and citizen of Honduras. She was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I) for having been convicted of a Crime Involving Moral Turpitude (CIMT). The applicant has a U.S. citizen daughter, a U.S. citizen husband and a lawful permanent resident (LPR) mother. 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 had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on January 10, 2007.

On appeal, the applicant asserts states that she wishes to be close to her family in the United States.

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, that:

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

....

(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 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

Section 212(h) also states that:

. . . No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if . . . since the date of such admission the alien has been convicted of an aggravated felony

Section 101(a)(43) states as one of definition of an aggravated felony:

(G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment is at least one year

The record reflects that the applicant was convicted of Retail Theft, § 720 5/16A-3(a) of the Illinois Compiled Statutes (ILCS) on March 26, 1998. Retail theft is a CIMT and the applicant is, therefore, inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act. *Matter of Jurado*, 24 I&N Dec. 29 (BIA 2006). Based on her prior convictions for theft,¹ the applicant was convicted of a Class 4 felony, which imposed a sentence of not less than one year and not more than three years of imprisonment. 730 ILCS § 5/5-8-1(a)(7).

The record establishes that the applicant was admitted to the United States as a lawful permanent resident on April 7, 1976 and was subsequently convicted of a theft offense punishable by a period of at least one year of incarceration, i.e., an aggravated felony. Accordingly, the applicant is statutorily ineligible for a waiver of her inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

Having found that the applicant to be statutorily ineligible for a waiver, the AAO finds no purpose would be served in discussing whether she merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ The applicant had been previously convicted of five thefts, which were waived under former section 212(c) of the Act on March 13, 1997.