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

U.S. Citizenship and Immigration Services

H2

[redacted]

Date: FEB 29 2012 Office: WASHINGTON, D.C. FILE: [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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.

Thank you,

Michael Dunaway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Washington D.C., and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the director for further proceedings consistent with this decision.

The applicant is a native and citizen of Peru. The director stated that the applicant was inadmissible 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 committing a crime involving moral turpitude, and under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation. The director indicated that the applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h); and section 212(i), 8 U.S.C. § 1182(i) of the Act. The director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel contends that the section 212(a)(7) of the Act was improperly applied; that the Form I-601 was not adjudicated, despite evidence of extreme hardship to the applicant's lawful permanent resident spouse and U.S. citizen children; and that the applicant's eligibility under section 245(i) of the Act was not considered.

The AAO will first address the finding of inadmissibility for having been convicted of committing a crime involving moral turpitude. Section 212(a)(2) of the Act states that:

> (A)(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.

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

> [M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....
>
> In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude. In evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a "realistic probability, not a theoretical possibility," that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where, at the time of the proceeding, an "actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien's own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude." *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

The record shows that on July 2000 the applicant pled guilty to misuse of a social security number in violation of 42 U.S.C. § 408(a)(7)(B). She was imprisoned for three days and placed on probation for twelve months. 42 U.S.C. § 408(a)(7)(B) provides that:

> (a) In general
>
> Whoever . . .
>
> (7) for the purpose of causing an increase in any payment authorized under this subchapter (or any other program financed in whole or in part from Federal funds), or for the purpose of causing a payment under this subchapter (or any such other program) to be made when no payment is authorized thereunder, or for the purpose of obtaining (for himself or any other person) any payment or any other benefit to which he (or such other person) is not entitled, or for the purpose of obtaining anything of value from any person, or for any other purpose—
>
> . . .
>
> (B) with intent to deceive, falsely represents a number to be the social security account number assigned by the Commissioner of Social Security to him or to another person, when in fact such number is not the social security account number assigned by the Commissioner of Social Security to him or to such other person; or . . .

The AAO is unaware of any published federal cases addressing whether the crime of misuse of a social security number under 42 U.S.C. § 408(a)(7)(B) is a crime of moral turpitude. However, in *Matter of Adetiba*, 20 I&N Dec. 506 (BIA 1992), the Board indicated that falsely representing a social security number assigned by the Secretary of the United States Department of Health and Human Services in violation of 42 U.S.C. § 408 (1988) involves moral turpitude. In *Adetiba*, the respondent applied for credit cards using fictitious names, addresses, and social security numbers. Upon receipt of those cards, he obtained or attempted to obtain things of value. The AAO finds this ruling persuasive. In the present case, the applicant was convicted of misuse of a social security number. In her sworn statement she stated that she used the false social security number to buy a car, open bank accounts, purchase a house, and obtain identification so as to work at an airport. In

view of *Adetiba,* we concur that the respondent's violation of 42 U.S.C. § 408 (1988) was a crime involving moral turpitude. She is therefore inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

A waiver is available for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. Section 212(h) of the Act provides, in pertinent part:

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (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 [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 . . .

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relatives here are the applicant's naturalized citizen spouse, and his U.S. citizen children. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

The applicant was also found inadmissible under section 212(a)(6)(C) of the Act for seeking admission into the United States by fraud or willful misrepresentation. The section provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record conveys that the applicant married her husband, who had been living in the United States since 1994, in Peru in 1996. In the record of sworn statement dated December 1, 2006, the applicant made the following statements. [redacted] she arrived in the United States as a transit without a visa holder and falsely informed the immigration inspector in San Francisco, California, that she was en-route to Hong Kong. The applicant actually intended to remain in the United States because her husband was living in Virginia. Although the applicant's United Airlines ticket reflects that arrival in San Francisco, California, with Hong Kong as her final destination, the record indicates that [redacted] she purchased an Amtrak ticket and traveled from [redacted] California, to her final destination of Washington, District Columbia. She then traveled to Virginia.

It is noted that the TWOV program was designed to facilitate international travel, and permitted:

> [A]liens traveling from one foreign country to another, which route entails a stopover in the United States, to proceed "in immediate and continuous transit" through this country without a passport or visa. 8 U.S.C. § 1182(d)(4)(C) (1970). An individual desiring to use the transit without visa privilege must establish, inter alia, that 1) he is admissible under the immigration laws, 2) he has confirmed means of transportation to at least the next country, and 3) he will accomplish his departure within eight hours after his arrival or on the next available transport. 8 C.F.R. § 214.2(c) (1980)[1]

Matter of Shirdel, 19 I&N Dec. 33 (BIA 1984), held that two Afghani citizens who posed as Turkish nationals were excludable under the second clause of section 212(a)(19) of the former Act, for seeking to enter the United States by fraud or a material misrepresentation. The decision specifically states that, "[t]he fraud was their flying to the United States posing as TRWOV aliens in order to submit applications for asylum." *Id.* at 36.

In the present matter, the record clearly reflects that the applicant traveled to the United States posing as a TWOV alien under the TWOV program. The record reflects further that the applicant's intention in coming to the United States was to live with her husband in Virginia and seek lawful permanent residency. The AAO finds that the applicant thereby committed a material misrepresentation and is, consequently, inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states that:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful permanent resident spouse is the only qualifying relative in this case. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

Lastly, the director found the applicant inadmissible under section 212(a)(7)(A)(i)(II) of the Act, and stated that no waiver is available for that ground of inadmissibility. Counsel contends that the director improperly applied section 212(a)(7) of the Act, and as a result failed to adjudicate the Form I-601. Section 212(a)(7)(A)(i)(II) of the Act provides the following:

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[1] The TWOV program was suspended on August 2, 2003.

7) Documentation requirements

(A) Immigrants

(i) In general

Except as otherwise specifically provided in this chapter, any immigrant at the time of application for admission--

(I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 1181(a) of this title, or

(II) whose visa has been issued without compliance with the provisions of section 1153 of this title,

is inadmissible.

(ii) Waiver authorized

For provision authorizing waiver of clause (i), see subsection (k) of this section.

Section 212(a)(7)(A)(i)(II) of the Act states that an alien is inadmissible at time of application for admission if he does not possess the required documentation for admission into the United States. The AAO notes that the director was correct in stating there is no waiver available for inadmissibility under section 212(a)(7)(A)(i)(II). However, section 212(a)(7)(A)(i)(II) pertains to documentary requirements for admission, particularly at a port-of-entry. Should the applicant otherwise establish eligibility for adjustment of status, including obtaining a waiver of her inadmissibility under sections 212(a)(2)(A)(i)(I) and 212(a)(6)(C)(i) of the Act, then she will be entitled to possession of valid documentation and section 212(a)(7)(A)(i)(II) will no longer apply.

Therefore, the matter will be remanded to the director for issuance of a new decision addressing the merits of the applicant's Form I-601 waiver application. Prior to issuing the decision, the director will provide the applicant the opportunity to submit new and/or updated evidence regarding extreme hardship.

ORDER: The matter is remanded to the director for issuance of a decision addressing the merits of the applicant's Form I-601 waiver application.