U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

Date: JUN 2 4 2013 Office: BALTIMORE FILE:

IN RE:

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:

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,

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Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). A motion to reopen and reconsider was granted by the AAO and the prior decision was affirmed. The matter is now before the AAO on a motion to reopen. The motion will be granted and the waiver application will be approved.

The applicant is a native and citizen of Belize 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 crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that she may reside in the United States with her U.S. citizen spouse and child.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to either of her qualifying relatives. The application was denied accordingly. *Decision of the District Director,* dated February 12, 2007.

On appeal, the AAO first noted that the applicant was clearly inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The AAO concluded that the applicant had failed to establish that her U.S. citizen spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant as a result of her inadmissibility and alternatively, were he to remain in the United States while his wife resided abroad due to her inadmissibility. The appeal was dismissed. *Decision of the AAO,* dated July 13, 2009.

On motion to reopen and reconsider, the AAO noted that the deficiencies outlined with respect to hardship to the applicant's spouse were the applicant to relocate abroad while he remained in the United States had not been addressed. As for relocating abroad to reside with the applicant, the AAO noted that no documentation establishing the applicant's spouse's long-term ties to the United States had been provided. Moreover, the AAO noted that it had not been established that the applicant's spouse's mother would be unable to travel to Belize to visit her son. Further, the AAO noted that no employment and/or medical documentation had been provided to establish that relocating abroad would cause the applicant's spouse extreme hardship. The motion was granted and the prior decision to deny the waiver was affirmed. *Decision of the AAO,* dated February 22, 2012.

On motion to reopen, counsel has submitted the following: a brief, dated March 24, 2012; medical documentation pertaining to the applicant's spouse and child; support letters; financial documentation; and a letter and biographical information from the applicant's mother-in-law. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
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> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
> >
> > . . .
> >
> > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
> >
> > . . .
> >
> > (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

With respect to the AAO's finding that the applicant is inadmissible for unlawful presence, in *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012), the Board of Immigration Appeals (BIA) held that an applicant for adjustment of status who left the United States temporarily pursuant to advance parole under section 212(d)(5)(A) of the Act did not make a departure from the United States within the meaning of section 212(a)(9)(B)(i)(II) of the Act. Here, the applicant obtained advance parole under section 212(d)(5)(A) of the Act, temporarily left the United States pursuant to that grant of advance parole, and was paroled into the United States. In accordance with the BIA's decision in *Matter of Arrabally,* the applicant did not make a departure from the United States for the purposes of section 212(a)(9)(B)(i)(II) of the Act. Accordingly, the applicant is no longer deemed to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Nevertheless, the applicant remains inadmissible under section 212(a)(2)(A)(i)(I) of the Act based on the applicant's convictions. The applicant was convicted in February 1998 for Petty Theft with a Prior by the Los Angeles County Superior Court of the State of California. She was ordered to serve 30 days in jail less credit for one day; had to pay fees and fines, and was placed on summary probation for 24 months. In addition, in March 1995, the applicant was convicted of Theft of Property by the Los Angeles County Superior Court of the State of California. She was ordered to pay fees and fines and was placed on summary probation for a period of 12 months. The AAO has reviewed the statutes, case law and other documents related to these convictions, as well as the

relevant precedent decisions from the Board of Immigration Appeals and the courts. The AAO concurs with the district director that the applicant has been convicted of multiple crimes involving moral turpitude and is therefore inadmissible under section 212(a)(2)(A)(i) of the Act.

Section 212(a)(2) of the Act provides, in pertinent part:

> (A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
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> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or....is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

> 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 –
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> (1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General (Secretary) that –
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> (i) . . . the 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,
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> (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
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> (iii) the alien has been rehabilitated; or
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> (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 . . . .
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> (2) The Attorney General (Secretary), in his discretion . . . has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

Section 212(h)(1)(A) of the Act provides that the Secretary may, in her discretion, waive the application of subparagraph (A)(i)(I) of subsection (a)(2) if the 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. An application for admission to the United States is a continuing application, and admissibility is determined on the basis of the facts and the law at the time the application is finally considered. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992).

Since the activities that are the basis for the applicant's criminal convictions occurred more than 15 years ago, she is eligible for a waiver under section 212(h)(1)(A) of the Act. Section 212(h)(1)(A) of the Act requires that the applicant's admission to the United States not be contrary to the national welfare, safety, or security of the United States, and that she has been rehabilitated. The record shows that the applicant's convictions pertain to criminal activities performed by the applicant more than fifteen years ago, the applicant does not have any arrests or convictions that are unrelated to the crimes that led to the applicant's inadmissibility, the applicant has been gainfully employed in the United States for over a decade, the applicant is the spouse of a U.S. citizen and the mother of a young U.S. citizen son, and numerous individuals have attested to the moral character of the applicant. The AAO therefore finds that the applicant has provided sufficient evidence to demonstrate that her admission to the United States is not contrary to the national welfare, safety, or security of the United States, and that she has been rehabilitated, as required by section 212(h)(1)(A)(ii) and (iii) of the Act.

Demonstrating that her admission to the United States is not contrary to the national welfare, safety, or security of the United States, and that she has been rehabilitated, as required by section 212(h)(1)(A)(ii) and (iii) of the Act, is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Id.* For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957). The AAO must "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 300 (BIA 1996) (citations omitted).

The favorable factors in this matter are the applicant's U.S. citizen spouse and child, the hardships that the applicant's family would face if the applicant were not present in the United States, community ties as the applicant has been residing in the United States since 1991, gainful and long-term employment with [redacted] as a billing clerk since May 1992, payment of taxes, home ownership and the passage of more than 15 years since the violations that lead to the

above-referenced convictions for crimes involving moral turpitude. The unfavorable factors in this matter are the applicant's two criminal convictions, her probation violation in 2000[1] related to the above-referenced conviction in 1998 and periods of unauthorized presence and employment.

The crimes and immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

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[1] The decision of the District Director states that the applicant was arrested for theft on February 20, 2000 and April 24, 2004. A review of the Applicant's 1998 record of conviction for theft, including a detailed printout of proceedings before the Municipal Court for the County of Los Angeles, indicates the applicant was arrested on February 20, 2000 after a bench warrant had been issued for failure to appear in connection with the February 1998 theft conviction. The applicant also surrendered on April 24, 2000 (not April 24, 2004) to serve a 45-day sentence for the 1998 theft conviction. The record does not establish that the applicant was arrested in 2000 for a separate theft offense, but rather was arrested for a probation violation in connection with the February 1998 conviction.