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**U.S. Citizenship  
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FILE: [REDACTED] Office: SAN FRANCISCO

Date: MAR 05 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)

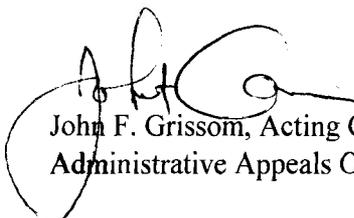
ON BEHALF OF APPLICANT:

[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.

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, San Francisco, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of El Salvador 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 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 parents and daughter in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and that the unfavorable factors far outweighed the favorable ones in this case. The district director denied the application accordingly. *Decision of the Director*, dated May 17, 2006.

On appeal, counsel contends that the applicant established extreme hardship to a qualifying relative.

The record contains, *inter alia*: declarations from the applicant's mother and father; a letter from San Mateo County verifying the applicant is not currently receiving financial assistance; a letter from the applicant's church; letters from the applicant's child's school; and an approved Immigrant Petition for Alien Relative (Form I-130) filed by the applicant's father. 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 . . . 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 -

. . . .

- (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 on May 8, 1989. The record further indicates, and counsel does not contest, that she has been arrested and convicted several times, including a 1991 conviction for grand theft and a 1995 conviction for theft. Therefore, the record shows that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude. *See Briseno-Flores v. Att’y Gen. of U.S.*, 492 F.3d 226, 228 (3<sup>d</sup> Cir. 2007) (guilty plea to petty theft was a crime involving moral turpitude) (citing *Quilodran-Brau v. Holland*, 232 F.2d 183, 184 (3<sup>d</sup> 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999), provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under the Act. These factors include: the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying 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 this case, there is no evidence that the applicant’s parents or daughter would suffer extreme hardship as a result of the applicant’s waiver being denied. Although counsel contends the applicant is married to a U.S. citizen in his Brief in Support of Appeal, there is no evidence in the record that the applicant is married to a U.S. citizen. According to the declarations from the applicant’s parents, the applicant is a good mother and they all love each other very much. *Declaration of* [REDACTED], dated June 10, 2002; *Declaration of* [REDACTED], dated June 27, 2003. There is no declaration from the applicant’s thirteen year old daughter and no specific allegation addressing how the denial of the applicant’s waiver application would cause her daughter extreme hardship. There is no supporting documentary evidence addressing how the family’s situation rises to the level of extreme hardship. Rather, their situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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 (9<sup>th</sup> 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991) (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). Going on record without any supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (BIA 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

To the extent counsel contends in his brief that “the USCIS failed to consider the present country conditions in El Salvador” and that Salvadorans have been extended Temporary Protected Status (TPS), the AAO notes that the applicant may not be granted a waiver for TPS purposes under section 244(c)(2)(A)(iii)(I) of the Act. Further, the grant or denial of the waiver does not turn only on whether the applicant has established sufficient humanitarian concerns, but also depends on a determination that the applicant merits a favorable exercise of discretion by the Secretary of Homeland Security. In this case, there is no statement or letter from the applicant addressing her past criminal history or taking any responsibility for her actions. The AAO concludes that the district director properly concluded that based on the applicant’s numerous criminal convictions and disregard for the laws of the United States, the applicant does not merit a waiver as a matter of discretion.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant’s parents or daughter caused by the applicant’s inadmissibility to the United States. In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), 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.