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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

H2

[redacted]

FILE: [redacted] Office: BALTIMORE, MD Date: JUL 18 2008

IN RE: Applicant: [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:

[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the District Director, Baltimore, Maryland. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the Form I-601 will be approved.

The applicant is a native and citizen of Haiti who was found to be inadmissible to the United States 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 a crime involving moral turpitude. The applicant seeks a waiver of her ground of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h).

The district director found the applicant had failed to establish that a qualifying family member would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601 was denied accordingly.

On appeal the applicant asserts, through counsel, that the district director did not properly analyze her extreme hardship claim, and the applicant asserts that the evidence in the record establishes her three U.S. citizen children will suffer extreme hardship if she is denied admission into the United States. In support of her claim, the applicant submits updated medical evidence and Haitian country conditions evidence.

Section 212(a)(2)(A)(i) of the Act provides in pertinent part that:

> [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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Criminal history evidence contained in the record reflects that on July 2, 2002, the applicant was convicted of Theft over $500, in violation of Article 27, Section 342 of the Maryland Code (now Article 7 Section 104 of the Maryland Code.) The applicant was sentenced to incarceration, 364 days, 11 months, 27 days suspended, and three years probation.

Maryland Criminal Code Article 7. Section 104 states, in pertinent part that:

> (a) A person may not willfully or knowingly obtain or exert unauthorized control over property, if the person:
>
> > 1) intends to deprive the owner of the property;
> > 2) willfully or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or
> > 3) uses, conceals, or abandons the property knowing the use, concealment, or abandonment probably will deprive the owner of the property.

(b) A person may not obtain control over property by willfully or knowingly using deception if the person:

1) intends to deprive the owner of the property;
2) willfully or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or
3) uses, conceals, or abandons the property knowing the use, concealment, or abandonment probably will deprive the owner of the property.

A review of the crime committed by the applicant reflects that it qualifies as a crime involving moral turpitude. The Board of Immigration Appeals (Board) held in *Matter of Perez-Contreras,* 20 I&N Dec. 615, 617-18 (BIA 1992) that:

> [I]n 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. . . .

The offense committed by the applicant contains an element of knowing or intentional corrupt conduct. Furthermore, "[i]t is well-settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude." *See Matter of Scarpulla,* 15 I&N Dec. 139, 140-141 (BIA 1974.) Because the applicant's conviction for theft constitutes a conviction for a crime involving moral turpitude, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Section 212(a)(2)(A)(2)(ii) of the Act, 8 U.S.C. § 1182(a)(2)(A)(2)(ii) provides in pertinent part:

> (ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-
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> > (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

In the present matter, the applicant was sentenced to a 364 day, 11-month term of imprisonment, with 27 days suspended. Because the term of imprisonment is in excess of six months, the applicant does not qualify for the exception contained in section 212(a)(2)(A)(2)(ii) of the Act.

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

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

Section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

The record reflects that the applicant has three U.S. citizen children: [redacted] born November 14, 1997 (10 years old); [redacted], born September 18, 2003 (4 years old); and [redacted]h, born May 16, 2006 (2 years old.) The applicant's children are qualifying family members for section 212(h) of the Act, waiver of inadmissibility purposes. Hardship to the applicant does not qualify for consideration under section 212(h), waiver of inadmissibility provisions, and may be considered only to the extent that it directly causes hardship to a qualifying relative.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors deemed relevant in determining whether an alien has established extreme hardship. The 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. The Board held in *Matter of Ige,* 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

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). In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the U.S. Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The U.S. Ninth Circuit Court of Appeals emphasized that the common results of deportation are insufficient to prove extreme hardship.

The record contains the following evidence relating to the applicant's extreme hardship claim:

> An October 24, 2006, affidavit signed by the applicant stating that she left Haiti at the age of fourteen and the U.S. is her home. She states that she suffers from Bipolar Disorder, which caused her to make mistakes in her life in the past, but that she now works as a realtor and gets quality psychiatric treatment and daily medication for her disorder. The applicant states

that each of her children has a medical condition. She states that has Attention Deficit Hyperactivity Disorder, and is under psychiatric treatment and daily medication. [redacted] has sickle cell anemia, and needs constant care, blood transfusions and daily medication, and [redacted] was born with a heart condition that needs constant care and monitoring. The applicant states that her children's lives would be in danger in Haiti due to the lack of adequate medical care and safe water, and because there is no peace in Haiti. She states that her children would also be unable to receive a decent education in Haiti. The applicant indicates further that she would also be unable to receive adequate medical care for her Bipolar Disorder in Haiti. The applicant states that her children are too little to live without her, and she indicates that her children would suffer extreme hardship if they were separated from her and remained in the U.S. without their mother.

An affidavit signed on October 23, 2006, by the father of stating that [redacted] was born with a heart condition that requires frequent doctor visits. He states that he works two full-time jobs, day and night, and that he has three other children to support, and he states that he does not have the time or skills to be a full-time father to [redacted].

An October 19, 2006, letter signed by [redacted] MD., stating tha[redacted] has been her patient since birth, and that he was "born with sickle cell disease and requires frequent and regular specialty medical care visits. Additionally, [redacted] has required critical and urgent medical attention due to the severity of his sickle cell disease since birth." Dr. indicates that sickle cell disease is a potentially fatal disease, and she states that, "it is essential that children receive routine and quality care in order to have a chance of fighting sickle cell disease."

Medical records reflecting tha[redacted] frequently suffers from medical symptoms requiring hospital or medical treatment.

An October 24, 2006, letter signed by M.D. stating tha[redacted] was born with a congenital heart disease-atrial septal defect (ASD) and pulmonary brach stenosis. Dr. [redacted] indicates that [redacted] has been under her professional care since birth, and she states that will need regular follow-up for her heart condition.

A November 26, 2007, letter signed by [redacted], M.D. clarifying her October 24, 2006, letter, and stating that it is not clear how [redacted]'s medical conditions will develop, or whether they will pose a threat to her health, and that this is why she should remain in the U.S. for regular checkups and testing. She states that, '[redacted] is at a critical stage in her health development and needs regular, specialized, and appropriate medical care to ensure that life-threatening complications do not arise." Dr. [redacted] indicates further that:

> [T]he emotional well-being of patients dealing with chronic diseases or ailments is extremely important to the maintenance of a healthy balance.

> Should [redacted] be kept in the U.S. and the mother sent back to Haiti, I believe the separation could cause so much stress and trauma to the little girl that it could exacerbate her conditions.

An October 23, 2006, letter signed by [redacted], M.D. stating that and the applicant have received psychiatric care from her, and that has Attention Deficit Hyperactivity Disorder (ADHD), and the applicant has Bipolar I D/O, Manic. Dr. [redacted] states that both illnesses require ongoing specialty monitoring and follow-up, and that they require daily medication.

November 13, 2003, and July 9, 2004, Psychological Evaluation forms for [redacted] reflecting that he suffers from a Depressive Disorder, and a related August 18, 2004, treatment plan recommending individual therapy once a week, and family therapy without patient once a week

A November 27, 2007, letter signed by [redacted], M.D., stating that Steven suffers from ADHD, and is being treated with regular medication. Dr. indicates that stress exacerbates the ADHD condition, in part because it "disrupts sleep which the medical community accepts as being critical for ADHD patients in order to be able to function properly." Dr. [redacted] indicates further that the health and well being of the applicant's children would be jeopardized in Haiti if the applicant did not receive proper treatment or medication for her Bipolar Disorder. Dr. [redacted] indicates that [redacted]s father is deceased, and that would be placed in a foster care/adoption scenario if his mother were sent back to Haiti and he remained in the United States. Specifically, Dr. [redacted] states:

> [S]hould [redacted]s mother be sent back to Haiti and [redacted] be made to remain here in foster care/adoption scenario, the future for [redacted] will be bleak. First, children with ADHD may be harder to place in adoptive homes and thus may end up being foster cared within the social system until he [*sic*] becomes an adult. Second, although within the social system, [redacted] may have access to proper therapy and medication, the emotional trauma of having his family and his sole support system torn from him may be so extreme as to lead to problems already listed above....

Internet article information on sickle cell disease and congenital heart disease.

2006 and 2007, U.S. Department of State country conditions and Consular Information Sheet information on Haiti reflecting in pertinent part that:

> Medical facilities in Haiti are scarce and for the most part sub-standard; outside the capital standards are even lower. Medical care in Port-au-Prince is limited, and the level of community sanitation is extremely low.

> The information indicates further that: "there are no safe areas in Haiti," and crime is a chronic problem; "kidnapping remains the most critical security concern; kidnappers frequently target children"; and kidnappings include, "frequent kidnappings of Americans for ransom." The information additionally indicates that, many children do not have access to public primary education due to the insufficient number of public schools.

The AAO finds, upon review of the totality of the evidence, that the applicant has established that her three children would suffer emotional and physical hardship beyond that normally experienced upon the removal of a family member, if the applicant were denied admission into the United States and they moved with their mother to Haiti. The AAO notes the medical conditions of all of the applicant's children and the limited medical facilities and care available in Haiti. The AAO notes further the limited facilities and care available for the applicant to receive treatment for her Bipolar Disorder condition in Haiti, and the effect such lack of treatment could have on the applicant's children. The AAO also notes the unsafe conditions in Haiti, and the criminal and public health risks posed to the applicant's children. In addition, the AAO notes the limited public education facilities available to children in Haiti. Based on the totality of the above factors, the AAO finds that the applicant has established her children would suffer extreme hardship if they moved to Haiti with their mother.

The AAO finds that the applicant has additionally established that her children would suffer hardship beyond that normally experienced upon the removal of a family member, if they remained in the United States without their mother. The AAO notes the young ages of the applicant's children (10, 4 and 2 years old), the fact that the evidence indicates that the applicant is their primary caretaker, and the indication that none of the children appears to have a father or other family member that has, or would be able to provide parental, emotional, medical or financial care in the event that the children were separated from their mother. _____ father states in his affidavit that he would be unable to care for [redacted] by himself, moreover, the evidence reflects that father is deceased, and it appears that [redacted]s father is also uninvolved in his life. The doctor's letters from Dr. [redacted] and reflect that separation from their mother and primary caretaker, at this age could exacerbate [redacted]s ADHD condition, and Patrice's heart condition. Dr. [redacted]s letter indicates further that at least would be in a bleak foster care/adoption scenario if he remained in the U.S. without his mother. Based on the totality of the above factors, the AAO finds that the applicant has established her children would suffer extreme hardship if they remained in the United States without their mother.

Accordingly, the applicant has established that her U.S. citizen children would suffer extreme hardship if her Form I-601 waiver application were denied.

The AAO finds further that the applicant merits a waiver of inadmissibility as a matter of discretion.

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. *Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). In evaluating whether relief is warranted in the exercise of discretion, the factors adverse to the alien may include the nature and underlying circumstances of the removal ground at issue:

> [T]he presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must:

> [B]alance 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. *Id.* at 300. (Citations omitted.)

The favorable factors in the present case are the fact that:

> The applicant's 10 year old, 4 year old and two year old U.S. citizen children would suffer extreme emotional and physical hardship if discretion were not exercised in the applicant's case.
>
> The applicant came to the United States from Haiti as a 14 year old child, and she has lived in the U.S. for over 20 years.
>
> The applicant attempted to legalize her immigration status by filing a bona fide marriage-based adjustment of status application and a battered spouse.based application in June 1995, and a subsequent HRIFA based petition in May 2000.
>
> The applicant's criminal conviction occurred over six years ago, in July 2002, and the record contains no evidence to indicate that the applicant was convicted for any crime subsequent to that time.

The applicant's statement that her unstable and criminal history was based in part on her untreated Bipolar Disorder, and the evidence that the applicant now receives medication and treatment for her disorder.

The adverse factors include her initial entry without inspection, periods of unauthorized presence and employment and her criminal conviction.

The AAO finds that the immigration violations and criminal conviction are serious in nature and cannot be condoned. The AAO finds, however, that when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

Section 291 of the Act provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has met her burden in the present matter. The appeal will therefore be sustained and the Form I-601 application will be approved.

ORDER: The appeal is sustained. The application is approved.