

DATE: (DD/MM/YYYY)

APPLICANT: (NAME)

PETITIONER: (NAME)

IN RE: (APPLICANT'S NAME), I-601 Waiver

**BRIEF IN SUPPORT OF APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSABILITY UNDER SECTION 212(h) OF THE IMMIGRATION AND
NATIONALITY ACT, 8 U.S.C. § 1182(h)**

STATEMENT OF THE FACTS

(NAME), the applicant, a native and citizen of (COUNTRY X) who was lawfully admitted to the United States on (DATE), in visa classification (VISA CLASSIFICATION) visa. *See* Exhibit 1. On (DATE), (APPLICANT'S NAME) married (PETITIONER'S NAME) in (CITY/COUNTY/STATE). *See* Exhibit 2. On (DATE), applicant pleaded guilty before the (COURT NAME), (STATE), Order entered on (DATE) *See* Exhibit 3. On (DATE), USCIS received petitioner's Form I-130, Petition for Alien Relative, seeking to qualify applicant, (NAME), as a spouse of United State citizen under section 201(b) of the Immigration and Nationality Act (INA). Concurrently, applicant submitted Form I-485, Application to Register Permanent Residence or Adjust Status. *See* Exhibit 4. On (DATE), both petitioner and applicant appeared for the Adjustment of Status Interview. *See* Exhibit 5. During the interview it was established that (APPLICANT'S NAME) conviction constitutes a Crime involving Moral Turpitude (CIMT) for the purposes of adjusting his status in the United States. As a result, applicant was found to be inadmissible to the United States pursuant to INA 212(a)(2)(A)(i)(I).

Subsequently, they were directed to submit Form I-601, Application for Waiver of Grounds of Inadmissibility, requesting relief from inadmissibility under section 212(h) of the Act, [8 U.S.C. §1182(h)]. *See* Exhibit 6.

ARGUMENT

THE APPLICANT ASSERTS THAT DENIAL OF HIS WAIVER APPLICATION
WOULD RESULT IN EXTREME HARDSHIP TO A QUALIFYING RELATIVE

Section 212(a)(2)(A) of the Act states, in pertinent parts:

(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.

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

The Attorney General [Secretary of Homeland Security] may, in his discretion, wave the application of subparagraph (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

[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...; and

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

Extreme hardship is “not a definable term of fixed and inflexible content or meaning”, but “necessarily depends upon the facts and circumstances peculiar to each case.” *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided the list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). These factors to 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. *Id.* At 566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then

“determine whether the combination of hardship takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec.880, 882 (BIA 1994)).

Therefore, it is necessary to demonstrate that denial of admission would result in extreme hardship to a qualifying relative, qualifying relative for purpose of section 212(h) of the Act, [8 U.S.C. §1182(h)].

Extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event he or she remains in the United States.

A. Qualifying Family Members Would Suffer Extreme Hardship if They Remain in the United States

1. Extreme Hardship of Qualifying Relatives based on Financial Considerations

Applicant and petitioner have a minor child, (NAME), DOB: (DD/MM/YYYY). *See* Exhibit 7. Petitioner also has primary custody of two minor children from a previous marriage: (NAME), DOB: (DD/MM/YYYY); (NAME), DOB: (DD/MM/YYYY). All children are U.S. Citizens. *See* Exhibit 8. The Qualifying Relatives are petitioner ((NAME)and their minor child (NAME).

Applicant’s current annual income is \$_____. *See* Exhibit 9. Petitioner’s annual income is \$_____. *See* Exhibit 10. Pursuant to 2015 HHS Poverty Guideline, income for household size of 4 (including petitioner and her 3 dependent children) would have to be \$_____ in case the applicant is deported. *See* Exhibit 11. Since her current income is only \$_____, and without applicant’s income, all the qualifying

relatives, (PETITIONER'S NAME) and their minor child (NAME), would experience extreme financial hardship. As it was stated in petitioner's Affidavit, if (APPLICANT'S NAME) is denied the possibility to adjust his status, she will be unable to receive any financial assistance from her relatives due to her relatives' own financial responsibilities. *See* Exhibit 12. The qualifying relative, in this case, (PETITIONER'S NAME) will simply be unable to provide for her children as she would fall below the poverty guidelines.

2. Extreme Hardship of Qualifying Relatives based on Medical Considerations due to Separation

In analyzing whether the qualifying relatives will suffer extreme hardship, it is important to take into consideration the consequences of such separation on the qualifying relatives: spouse and especially minor children.

Since applicant and petitioner's marriage, (APPLICANT'S NAME) has been raising petitioner's two minor daughters from her previous marriage as his own, in addition to a son they have together from their marriage. Since the time applicant was found to be inadmissible, all the children began to experience emotional distress and anxiety due to the possibility of their father being deported. All children were referred for counseling at the (MEDICAL PROVIDER). *See* Exhibits 13, 14, 15. Additionally, petitioner herself is currently under care of (MEDICAL PROVIDER) for depression as related to her husband's immigration status. *See* Exhibit 16.

B. Qualifying Family Members Would Suffer Extreme Hardship in Case of Relocation to Dominican Republic.

1. Extreme Hardship of Qualifying Relatives based on Lack of Ties to (COUNTRY X).

Petitioner, (NAME) has no ties to (COUNTRY X). (PETITIONER'S NAME) was born in (COUNTRY Y). *See* Exhibit 17. Her mother lives in (COUNTRY Y) and her father lives in U.S. She has no relatives in (COUNTRY X), which would result in extreme hardship to her because she would not have any emotional support while in (COUNTRY X). Currently she has a good relationship with her father and turns to him on a regular basis for emotion support.

Additionally, petitioner has two minor children from a previous marriage. Pursuant to the Judgment of Divorce for petitioner and her ex-spouse, (NAME OF FORMER SPOUSE), (NAME OF FORMER SPOUSE) shall have reasonable rights of visitation with his children. *See* Exhibit 8. Notwithstanding the fact that petitioner's ex-spouse did not wish to participate in the lives of their children, petitioner would still have to follow procedures for relocation of her children to (COUNTRY X) pursuant to U.S. and International Law on relocation of children to a different country. However, there is a problem with her attempting to relocate her children to another country. Her ex-spouse would not agree to the relocation of their children to (COUNTRY X).

Her remaining choice would be:

1. To leave her children from former marriage in the U.S., petitioner moves with their son to (COUNTRY X).
2. To leave her children in the U.S, petitioner stays in the U.S., son goes with applicant to (COUNTRY X); or
3. To leave children in the U.S., petitioner stays in the U.S., son stays in the U.S., applicant goes to (COUNTRY X) (there will a custody battle over the son).

No matter which option would take place in case the applicant is deported, it would result in a split of the family unity which is an extreme hardship to the petitioner and the minor child.

Applicant, himself, does not have any relatives in (COUNTRY X). Applicant's mother is living in the United States, (CITY, STATE). His grandparents are deceased. *See* Exhibit 18. As a result, relocation to (COUNTRY X) would be an extreme hardship for the minor child of petitioner and applicant. The minor child would be precluded from having grandparents in his life or any other family members.

2. Extreme Hardship of Qualifying Relatives based on Financial Considerations

If petitioner relocates to (COUNTRY X) she would face an extreme hardship. She would not have a job upon relocation and she would not be able to provide for herself and her children.

According to Country Reports on Human Rights Practices for 2014, generated by U.S. Department of State, average unemployment rate for women in 2013 was 16 percent (compared to men unemployment rate of 9.9 %) and as stated in the Report “on average women received 16 percent less pay than men in jobs of equal content and requiring equal skills”. *See* Exhibit 19, page 31.

Additionally, according to the Country Reports, minimum wage for workers within Free Trade Zone (FTZs) was \$170 per month, minimum wage outside the zone ranged from \$162 to \$265 per month, minimum wage for the public sector was \$120 per month. According to the Worker Rights Consortium, estimated living wage was more than \$456 per month, while a “reasonable” total for a family of four was estimated at \$630 per month. *See* Exhibit 19, page 44.

Taking in consideration the statistics on labor and unemployment generated by the U.S. Department of State Report, extreme hardship to the petitioner is imminent upon relocation to (COUNTRY X). Additionally, they would not have a place to live in (COUNTRY X) due to the fact that petitioner nor applicant have any relatives in (COOUNTRY X).

3. Extreme Hardship of Qualifying Relatives based on Educational Considerations

As stated before, petitioner has three children; 2 from her previous marriage and 1 child from the marriage to applicant. Relocation to (COUNTRY X) would result in extreme hardship to her and all her children. The U.S. education system is by far more advanced than that of (COUNTRY X). *See* Exhibit 20. In order to provide quality education for their children similar to that in the U.S., petitioner and applicant would have to place their children in a private school.

However, the price of private education comes at a high cost. For example, in 2011-2012 school year in (SCHOOL NAME), (CITY) (city where the applicant from), tuition for first grade was \$10,000.00 with additional cost of \$4,000.00 for first time student and \$5,500.00 registration fee per student. *See* Exhibit 21. Based on financial hardship to petitioner, placement of all the children in a private school would be simply impossible.

If petitioner is to relocate to (COUNTRY X), her older children would not be able to attend secondary public school right away. According to the Country Reports on Human Rights Practices, by U.S. Department of State, legal documentation is required to register for school. *See* Exhibit 19, page 31. There will be a delay before the children can attend school while their legal documents are processed.

CONCLUSION

There is no doubt that if the applicant is deported to (COUNTRY X) his qualifying relatives, his wife, and the parties' minor child, would suffer extreme hardship. Whether the deportation would cause a split in the family if petitioner stayed, or if the entire family moved to (COUNTRY X), his qualifying relatives would suffer extreme hardship. The reason for this 601 Waiver was for the misdemeanor conviction dating back to (YEAR). From this time period to the present time he has not been involved in any illegal activity. Rather he works hard, loves his wife, supports his family, supports the petitioner, supports petitioner's two children from previous marriage and supports a child from the parties' marriage. Both the petitioner and applicant have a loving and meaningful relationship with their parents.

The wife, petitioner, loves her husband and their children. She and all the children are currently suffering from anxiety and depression about whether or not he will be deported. She faces extreme hardship if he is forced to leave the U.S. regardless of the fact if she leaves with him or not. She cannot even contemplate a split of their family. She doesn't want her husband to leave, and she doesn't want to leave. Her whole life is in the United States. All her children were born and raised in the United States.

We respectfully request that 601 Waiver be granted and allow applicant to remain in the United States.