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UNITED STATES DEPARTMENT OF HOMELAND SECURITY
UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES
VERMONT SERVICE CENTER
ST. ALBANS, VERMONT

In the Matter of)
) A087xxxxxx
 [REDACTED]) EAC1300xxxx
)
 Petitioner for U Nonimmigrant Status)
 _____)

BRIEF IN SUPPORT OF APPLICANT

The Immigration Center for Women and Children, through its counsel, Susan Bowyer, respectfully submits this brief in support of Petitioner, [REDACTED], in this motion to reconsider her I-918 Petition for U Nonimmigrant Status denial.

I. INTRODUCTION

[REDACTED], through undersigned counsel, hereby submits this motion to reconsider the July 31, 2014 denial of her I-918 Petition for U Nonimmigrant Status, with Exhibits A-F.

Ms. [REDACTED] submitted an I-918 Petition and I-192 Application on October 1, 2012. On September 25, 2013, USCIS issued a Request for Evidence that Ms. [REDACTED] merited

discretionary approval of her I-192 application. On December 4, 2013, Ms. ██████ responded to the RFE by clarifying how the evidence submitted with her I-918 and I-192 applications met the standards set forth in the BIA decision Matter of Hranka. USCIS determined again that the evidence she submitted was insufficient, and denied her I-192 application and the underlying I-918 application on July 31, 2014 (*See Exhibit A, I-918 and I-192 denials*).

Pursuant to 8 C.F.R. § 214.17(c), an I-192 denial may not be appealed. However, this section further notes, “nothing in this paragraph is intended to prevent an applicant from re-filing a request for a waiver of ground of inadmissibility in appropriate cases.” Therefore, with this Motion to Reopen, Ms. ██████ submits a new I-192 application with additional supporting evidence. (*See Exhibit B, I-192 Application for Advance Permission to Enter as Nonimmigrant*) Moreover, Ms. ██████ requests that USCIS reconsider its decision to deny the I-918 based on evidence previously submitted.

II. THE DENIAL FAILS TO CONSIDER THE EVIDENCE SUBMITTED WITH THE APPLICATIONS AND RFE RESPONSE.

The Request for Evidence issued September 25, 2013 (*See Exhibit C*) requested evidence regarding (1) Evidence of Rehabilitation; (2) Your reasons for wishing to remain in the United States; (3) Any mitigating factors in your favor (family ties, financial impact of departure on others, contributions or ties to the community in the United States); (4) An explanation, in your own words, of the specific circumstances surrounding the Act or conviction that prompted the need for this waiver request; (5) Loss of access to U.S. criminal justice system as it relates to your claim to victimization; (6) Any physical, medical, mental health or social services you require that are not readily available in your home country.

Ms. ██████ submitted substantial documentary evidence in support of the first four factors listed. The denial listed the types of evidence submitted, but did not discuss any of it except to categorically state that it was insufficient. There is no indication that the adjudicator read the evidence submitted with the application or RFE response. The denial does not cite a single fact attested in any of the submitted documentation. The Board of Immigration Appeals has held that, in assessing whether an applicant has met the burden that a waiver is warranted in the exercise of discretion, the adjudicator must balance adverse factors evidencing inadmissibility as a lawful permanent resident with the social and humane considerations presented to determine if the grant of the waiver appears to be in the best interests of the United States. Matter of Mendez-Moralez, 21 I&N Dec. 296 (BIA 1996), attached as Exhibit D). It does not appear from the text of the denial that the adjudicator undertook this balancing of factors.

The substantial evidence provided by Ms. ██████ that she is rehabilitated, and has many positive factors to support a discretionary determination included the following documents which were submitted with the original I-918/I-192 applications and RFE response, and XXXXX resubmitted with the applicant's new I-192 application.

1. Birth certificates of Ms. ██████'s three U.S. citizen children.
2. Letter from xxxxx, Program Director at Somos xxxx's Bridge to Kinder program, attesting to Ms. ██████'s commitment to her children's education and to her community, dated 08/23/2012.
3. Certificate of recognition from xxxx presented to Ms. ██████ on 08/22/2012 for her successful completion of a parent program geared to helping parents better support and advocate for their children in school.
4. Certificate issued to Ms. ██████ for her commitment to volunteering at xxxx School, dated 05/26/2004.
5. Letter from xxxx, Ms. ██████'s supervisor at xxxx, attesting to her good moral character as a dependable, honest and peace-loving woman, dated 06/18/2012.
6. Letter written by xxxx, counselor at xxx Middle School, stating how Ms. ██████ is an exceptional mother for being so attentive to the needs of her children, dated 06/07/2012.
7. Letter written by xxxx, friend and teacher of Ms. ██████, describing her as a smart, responsible and family-oriented individual, dated 06/15/2012.

8. Letter from xxxx, Ms. [REDACTED]'s property manager, stating how she has never known this applicant to smoke, drink alcohol or do drugs, dated 07/12/2012.
9. Letter from xxx, a friend of Ms. [REDACTED], describing this applicant as responsible, determined and free of any bad habits such as drinking alcohol or smoking, dated 07/25/2012.
10. Letter from xxxxx, Ms. [REDACTED]'s friend, stating that this applicant is well-deserving of a second chance as she is a hardworking woman who does not drink, smoke or use any drugs, dated 09/04/2012.
11. Letter from xxxx, Ms. [REDACTED]'s friend, referring to her as an honest person who is not involved with illegal drugs or activities, dated 08/28/2012.
12. Letter from xxx, Ms. [REDACTED]'s friend, attesting to this applicant's good moral character by describing her as a humble, attentive and loving woman who does not use or sell drugs, dated 08/20/2012.
13. Letter from xxxxx, Ms. [REDACTED]'s friend, describing her as a hardworking mother who is free of any addictions, dated 09/04/2012.
14. Letter from xxxxx, Ms. [REDACTED]'s friend, stating how this applicant is a responsible woman who is free of any addictions, 07/29/2012.
15. Letter from xxxx, family friend of Ms. [REDACTED], attesting to how she is a positive role model to her children.
16. Copy of Ms. [REDACTED]'s Declaration submitted with her I-918 petition regarding her criminal history and immigration violations.

USCIS may not consider evidence of positive factors in inadmissibility determinations of applicants with records of violent or dangerous crimes, except in extraordinary circumstances. Matter of Jean, 23 I&N Dec. 373 (A.G. 2002), attached as Exhibit E). However, USCIS did not in its denial in this case indicate that Ms. [REDACTED] was in this category of applicants. There was therefore no reason for USCIS to fail to individual consider and describe why any piece or group of evidence was insufficient. That failure to demonstrate how it has exercised discretion is therefore an abuse of discretion.

1. The denial fails to note why the Ms. [REDACTED]'s ties to the U.S. are insufficient positive factors.

The denial states at Page 3, "Your reasons for wanting to remain in the United States include caring for your three United States citizen children, and that you have stable employment." It then fails to provide any analysis of the probative value of that evidence. The denial indicates from the outset that the factors stated in Matter of Hranka will guide its decision.

One of those factors is the applicant's reasons for wishing to enter (or remain in) the United States. The RFE specifically requested, "2. Your reasons for wishing to remain in the United States." And "3. Any mitigating factors in your favor (family ties, financial impact of departure on others, contributions or ties to the community in the United States." However, the cursory statement above is the sole statement regarding the evidence submitted by Ms. XXXXX in response to this request.

III. THE DENIAL FAILED TO PROPERLY WEIGH THE EVIDENCE SUBMITTED WITH THE APPLICATIONS AND RFE RESPONSE.

a. The denial gives too much weight to negative factors.

1. The denial incorrectly states that Ms. XXXXX's personal statement shows a lack of accountability.

The denial, at Page 3 states, "...the personal statements show a lack of accountability in regard to the choices made." In fact, Ms. XXXXX's explanation in an attachment to her I-918 petition and in her sworn statement makes it clear that she accepts responsibility and feels deep remorse for her criminal violations.

"Even though I feel like dying of shame when I think back on my decisions, I am glad this happened to me because if I had not been caught lying the second time, I might have never learned my lesson.... I am filled with rage towards myself whenever I look over at my 19-year-old son and think about someone selling drugs to him. I was guilty because I allowed my ex-boyfriend to sell drugs to people. I would want to kill a woman who would sit there, simply looking at her boyfriend selling drugs to my son. I would die if my children ever found out that I was once that woman."

Moreover, USCIS learned of the fact, described in the denial, that Ms. XXXXX returned to her boyfriend because she noted that fact in both an attachment to her I-918 Form and her sworn statement. The fact that she provided that information to USCIS is an indication of her rehabilitation as an honest and trustworthy member of society.

Because the denial does not provide details about its conclusions, it is difficult to guess what is meant by the statement in the denial that the applicant's "personal statements show a lack of accountability in regard to the choices made." It is true that Ms. XXXXX remains firm in her conviction that she did not personally sell drugs, but instead was an accessory to her boyfriend and his associates by standing by while they did so. She accepted punishment for her role in the offenses and has demonstrated that she has been rehabilitated. Her assertion about the limits of her involvement in the criminal activity does not preclude her "from ever presenting persuasive evidence of rehabilitation by other means." Matter of Mendez Morales, at 304. Indeed, she submitted substantial documentation of her rehabilitation, in addition to maintaining a clean criminal record since 1993.

2. The denial's statement that an attempt to be smuggled into the United States is a serious charge conflates two unrelated types of offenses.

The denial states, "Regarding the seriousness of your charges, drugs are a major problem in the United States. Your attempts to protect your boyfriend by giving a false name and refusing to divulge to the authorities his location and your true name are serious charges, as are the two convictions for possessions drugs and your attempt to be smuggled into the United States. The first part of the sentence, which regards criminal offenses that Ms. XXXXX was charged with, is certainly valid. However, the last clause of the sentence, which refers to the applicant's own admission of attempting to enter the U.S. by hiding in a car, is not logically connected to the first part. She was never arrested for, charged with or convicted for her attempt to enter the U.S.

Moreover, the denial itself, at Page 3, indicates that the positive factors presented by Ms. XXXXX "do not sufficiently overcome the negative factors of your criminal history." This statement seems to indicate that the adjudicating officer either believes that the applicant was

criminally charged with her immigration violations, or that the denial is based on her 1992 and 1993 criminal violations only.

3. The denial gives too much weight to the 1992 and 1993 convictions for purchase/possession narcotic controlled substance and giving false name to a peace officer.

The denial states that drug and false identification crimes are serious. The applicant does not dispute this. However, as the denial itself acknowledges, the one drug offense and two false information to peace officer offenses took place over 20 years ago, with no similar offenses in the past 21 years.

In Matter of Hranka, 16 I&N Dec. 491 (BIA 1978) attached as Exhibit F), the Board of Immigration Appeals noted that the applicant engaged in behavior that made her inadmissible while she was in a relationship with a man who had a very negative influence on her. The BIA then determined that she had had no contact with him since two years before the BIA decision, which was convincing evidence of the applicant's rehabilitation. As the denial itself notes, the behavior that triggered Ms. XXXXX's criminal grounds of inadmissibility ended over twenty years ago.

Note that Ms. XXXXX does not argue that mere passage of time is sufficient to support her application for a waiver of inadmissibility factors. As noted below, she submitted substantial evidence of positive factors, including contributions to her community that outweigh the seriousness of her offenses.

4. The denial gives too much weight to the applicant's immigration violations.

USCIS has not previously indicated through decisions researched by U Status practitioners or through Stakeholder calls that unlawful entries or misrepresentations of material facts pose substantial risks to society. Therefore, Ms. XXXXX did not submit a statement in

support of her request to waive these factors with her initial application or RFE response. She is including such a statement with her newly submitted I-192 application.

Moreover, the information that USCIS has regarding most of Ms. XXXXX's immigration violations was provided by Ms. XXXXX herself. The applicant's admission of these facts that were otherwise unknown to USCIS is itself an indication that she is honest and trustworthy.

b. The denial gives too little weight to positive factors.

Ms. XXXXX submitted extensive evidence of positive factors requested in the RFE, listed above. However, as previously noted, the denial does not discuss the content of any of the evidence. It therefore appears that the adjudicating officer believes that the applicant's prior convictions, followed by immigration violations, conclusively bar her from eligibility for an I-192. This failure to consider all of the evidence, and instead to consider only the negative factors, is an abuse of discretion.

1. The denial summarily states, then dismisses evidence of Ms. XXXXX's three U.S. citizen children.

Ms. [REDACTED]'s RFE asked for evidence of her reasons for wishing to remain in the United States and her ties to the community. In addition to the letters that describe her equities described above, Ms. [REDACTED] submitted birth certificates of her three U.S. citizen children. The denial states on Page 3, "(3) your reasons for wanting to remain in the United States include caring for your three United States citizen children, and that you have stable employment." It then utterly fails to discuss how this evidence of Ms. [REDACTED]'s compelling reasons to remain in the United States and ties to the U.S. community was insufficient.

The applicant in Matter of Hranka had no U.S. citizen children. Her reasons for wishing to enter the United States were that she was embarrassed by her inability to travel to Detroit for social activities. That reason was considered sufficient in the BIA's analysis of the applicant's

eligibility for a favorable discretionary determination. The need to care for three U.S. citizen children cannot be considered less weighty. In Matter of Mendez Moralez, at 302, the BIA noted, “The underlying significance of the adverse and favorable factors is also to be taken into account. For example, if the alien has relatives in the United States, the quality of their relationship must be considered in determining the weight to be awarded this equity.” It is indisputable that a mother/child relationship should be accorded the greatest possible weight.

2. The denial summarily states that affidavits are insufficient.

Some of that evidence was in the form of letters. The denial does not discuss any information provided in those letters. It simply summarily states that affidavits are insufficient without corroborative evidence, and that the affidavits submitted do not overcome the negative factors. The Matter of Hranka decision was based on apparent testimony by the applicant’s mother and a letter from the principal of the applicant’s high school, who was also a psychologist and family friend. U Nonimmigrant Status petitions are adjudicated without testimony, and therefore must rely on affidavits in order to convey information held by an individual. It would be unfair to Ms. [REDACTED] to be denied simply because, unlike the applicant in Matter of Hranka, no in-person testimony could be presented.

The evidence previously submitted with Ms. [REDACTED]’s I-918 and I-192 applications, supplemented with the more detailed explanations and additional evidence included with this Motion, supports a finding that she merits a discretionary approval of her newly submitted I-192 application. Based on the above, Ms. [REDACTED] respectfully requests that her application for U Nonimmigrant Status (Form I-918) be approved.

Respectfully submitted, August 14, 2014

Susan Bowyer

Attorney for [REDACTED]