



U.S. Department of Justice

Immigration and Naturalization Service

H1

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[REDACTED]

File: [REDACTED] Office: LOS ANGELES, CA

Date: JAN 25 2001

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)

IN BEHALF OF APPLICANT: SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Mary C. Mulrean, Acting Director
Administrative Appeals Office

identification data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The applicant is a native and citizen of El Salvador who was found to be inadmissible to the United States under § 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 in May 1983. In December 1968, the applicant was married in Guatemala to a native and citizen of Guatemala. In August 1989, the applicant's wife became a lawful permanent resident of the United States and in December 1994, she naturalized as a United States citizen. The applicant is the beneficiary of an approved relative visa petition and seeks a waiver of this permanent bar to admission as provided under § 212(h) of the Act, 8 U.S.C. 1182(h), to reside in the United States with his wife and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the application accordingly.

On appeal, the applicant states that his wife and children will suffer extreme hardship if he is removed to El Salvador. His wife earns a small salary and his income is required to support the family, otherwise they would require public assistance.

The record reflects that the applicant was convicted of the felony of assault with a deadly weapon in Los Angeles, California on May 20, 1983. He was sentenced to 6 years imprisonment, which was suspended, and placed under probation for 5 years.

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(2) CRIMINAL AND RELATED GROUNDS.-

(A) CONVICTION OF CERTAIN CRIMES.-

(i) IN GENERAL.-Except as provided in clause (ii), any 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) WAIVER OF SUBSECTION (a)(2)(A)(i)(I), (II), (B), (D), AND (E).-The Attorney General may, in his discretion, waive application of subparagraph (A)(i)(I),...if-

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(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,

(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

(iii) the alien has been rehabilitated; or

(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; and

(2) the Attorney General, 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 for adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

Here, at least 15 years have elapsed since the applicant committed his last, and only, violation. Therefore, he is eligible for a waiver provided by § 212(h)(1)(A) of the Act.

Eligibility now hinges upon the applicant showing his admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and he has been rehabilitated.

Evidence in the record establishes that the applicant has sufficiently reformed or rehabilitated to warrant a favorable exercise of discretion. The applicant's inadmissible act was a single occasion in 1983 and he has not been arrested, indicted, charged or convicted of any other crime or violation since that incident. As further evidence of his rehabilitation, the applicant applied for and received a Certificate of Pardon dated May 11, 1995 from the State of California. Although a certificate of rehabilitation is not in and of itself proof of rehabilitation, it is indicative of the applicant's continued good character and moral conduct.

The record further reflects that applicant has been married for 32 years to his United States citizen wife and is the father of four children. His youngest, a 14 year old daughter, is also a citizen of the United States. The applicant has worked continually for the same employer for over 11 years and the administrative pastor of his church has submitted a statement that the applicant has been a member of the congregation since 1983 and has proven to be honest and responsible.

The applicant has presented evidence that he has rehabilitated from what may be deemed to have been an isolated act, is a responsible individual, and is not inadmissible under any other section of the Act. The applicant has shown that he warrants the favorable exercise of the Attorney General's discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(h), the burden of proving eligibility remains entirely with the applicant. Matter of Ngai, supra. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The decision of the district director is withdrawn, and the waiver application is approved.