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U.S. Citizenship and Immigration Services

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[redacted]

NOV 23 2004

FILE: [redacted] Office: MANILA, PHILIPPINES Date:

IN RE: [redacted]

PETITION: 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 PETITIONER:

[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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Manila, Philippines, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of the Philippines 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 is the spouse of a lawful permanent resident of the United States and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his wife and lawful permanent resident daughter.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated July 31, 2003.

On appeal, counsel contends that the applicant has provided evidence establishing extreme hardship to his wife and daughter. Counsel further asserts that Citizenship and Immigration Services failed to address several of the issues raised by the applicant and did consider irrelevant factors constituting an abuse of discretion. Counsel also points out that over 15 years have passed since the time of the activities for which the applicant is inadmissible therefore raising the possibility for waiver under section 212(h)(1)(A) of the Act. *Brief in Support of Appeal*, dated September 15, 2003.

In support of his assertions, counsel submits copies of immigrant visas issued to the applicant's children in the Philippines subsequent to the filing of the waiver application of the applicant. The entire record was considered in rendering a decision on the appeal.

The record reflects that on October 11, 1988, the applicant was convicted of Malversation and sentenced to 12 years and one day minimum to 18 years, eight months and one day maximum imprisonment. The applicant served a total of seven years, 10 months and 14 days of his sentence. Fines imposed on the applicant in 1992 relating to this crime were paid in full as of July 22, 2003.

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

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

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -
>
> > (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] 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 [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 . . .

The applicant was convicted of the crime of Malversation, which is akin to embezzlement, in October 1988 based on actions taken by the applicant prior to July 6, 1976. *Brief in Support of Appeal* at 20 ("The records of the case ... indicate that the charge sheet or Information was filed on July 6, 1976 (which would necessarily mean that the activities which constituted the crime happened even before 1976)."(emphasis removed)). The applicant applied for a visa on June 18, 2002. *Form I-601*, Question 8, dated August 22, 2002. Therefore, the crime involving moral turpitude for which the applicant was found inadmissible occurred more than 15 years prior to the applicant's application for a visa.

The AAO finds that the officer in charge erred in basing his decision on section 212(h)(1)(B) of the Act and failing to consider the eligibility of the applicant for waiver under section 212(h)(1)(A). The record reflects that the applicant has not been charged with any additional crimes since his conviction in 1988. The record establishes that the applicant does not possess a criminal record in the United States and the record does not establish that the admission of the applicant to the United States would be "contrary to the national welfare, safety, or security of the United States."

The record reflects that the applicant meets the requirements for waiver of his grounds of inadmissibility under section 212(h)(1)(A) of the Act. Further, the AAO notes that the applicant's spouse and children suffer emotional hardship as a result of their separation from the applicant. *Report on* [redacted] *from* [redacted] dated February 9, 2003 [redacted] is experiencing overwhelming psychological distress....It is my professional opinion that [redacted] would suffer extreme psychological hardship if her husband is not allowed to join her in the United States.")

The only unfavorable factor presented in the application is the applicant's conviction for Malversation in October 1988. The AAO notes that the applicant has not been charged with a crime since his conviction and the applicant's crime occurred more than 15 years ago, demonstrating the applicant's rehabilitation.

The applicant has established that the favorable factors in his application outweigh the unfavorable factors. The district director's denial of the I-601 application was thus improper.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret,* 15 I&N Dec. 620 (BIA 1976). Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

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