

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

H2

PUBLIC COPY

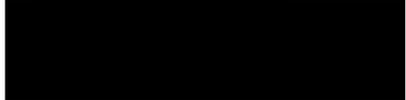


FILE:

Office: LOS ANGELES, CALIFORNIA

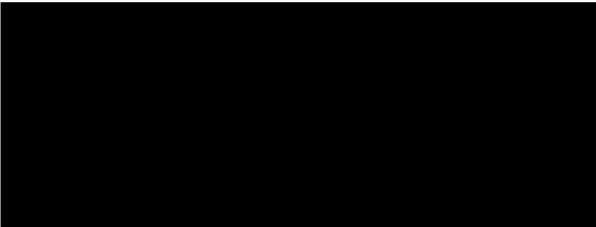
Date: AUG 15 2006

IN RE:



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:



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 waiver application was denied by the District Director, Los Angeles, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Mexico 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 AAO notes that the Immigration and Naturalization Service (Service) also charged the applicant with inadmissibility under section 212(a)(1)(A)(i), as he is HIV positive. After a review of the record, the District Director found that the applicant qualified for a section 212(g) waiver and granted the waiver accordingly. The applicant is the spouse of a U.S. citizen and now 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 U.S. citizen son.

The District Director concluded that the applicant had established that extreme hardship would be imposed upon a qualifying relative as a result of his departure; however, denied the section 212(h) waiver as a matter of discretion. *Decision of the District Director*, dated December 16, 2003.

On appeal, counsel contends that the positive factors in the applicant's situation substantially outweigh the negative factors, and that the section 212(h) waiver should be approved as a matter of discretion. *Attorney's Brief*.

In support of his assertions, counsel submits a brief dated January 5, 2003.¹ The record also includes a psychological evaluation for the applicant and his spouse written by [REDACTED] Ph.D., Clinical Psychologist, dated January 11, 2004; letter of support written by [REDACTED] President, CPHAC dated January 6, 2003; statement of financial position for the applicant and his spouse, dated December 31, 2003; letter of support written by neighbor [REDACTED] dated January 9, 2004; letter of support written by co-worker [REDACTED] dated January 2, 2003; letter of support written by [REDACTED] Sergeant in the [REDACTED] York City, dated January 10, 2004; certificate of completion, commercial service sales training program, dated April 26, 2002; letter confirming petition for graduation from Los Angeles Mission College, dated Fall 2003; North American Technician Excellence, Inc. (NATE) certificate, dated September 11, 2002; certificate of achievement, Puron refrigerant specialist, dated April 20, 2001; certificate, Boiler & Construction Seminars, Inc, dated April 10, 2002; certificate, CheckMe program for air conditioner diagnostic testing, dated June 20, 2002; certificate, Type Universal Technician, dated November 2, 1995; certificates, Dean's List, Los Angeles Mission College, dated Fall 2002 and Spring 2002; High School Equivalency Certificate, dated September 16, 1995; copy of State of California Contractor's State License Board issued to Vic's Heating & A/C dated May 18, 1998; certificate, Institute of Heating & Air Conditioning Industries, Inc., dated April 2-5, 2001, December 7, 9; Court Records, dated May 7, 1992 and October 15, 1992; FBI report, dated August 8, 1997; affidavits from the applicant's spouse, dated October 31, 1997, January 1, 2003, May 15, 2003, and January 1, 2004; Affidavits of the applicant, dated March 30, 1998 and January 4, 2004; tax statements for the applicant and his spouse; letter from Richard Llanes, Kaiser Permanente, evidencing the applicant's membership in the Kaiser Foundation Health

¹ The AAO notes that the attorney's brief is dated January 5, 2003, yet makes reference to the District Director's decision dated December 16, 2003. As it is impossible to refer to a decision made in the future, it appears that the year on the attorney's brief is in error and should read January 5, 2004.

Plan, Inc., dated November 8, 2002; medical reports and notes dated 2002, 2001, 1998, 1997; U.S. birth certificate for the applicant's son; Mexican birth certificate for the applicant; employment letter written by [REDACTED] Owner, Total Comfort Air, dated October 28, 1997; employment letter written by [REDACTED] Repair & Services, dated May 15, 1997; letter from [REDACTED] Asst. Coordinator for HIV Testing, Valley Community Clinic, dated October 20, 1997; letter from [REDACTED] M.D. Assistant Professor of Medicine, Olive View-UCLA Medical Center, dated March 3, 1998; letter from [REDACTED] Valley Community Clinic, dated May 15, 1997; marriage certificate for the applicant and his spouse, dated February 14, 1996; and a U.S. birth certificate for the applicant's spouse. The entire record was considered in rendering a decision on the appeal.

On November 29, 1991 the applicant committed the crime of forging a name on an access card. *Attorney's Brief*. On April 8, 1992 the applicant was arrested and charged with residential burglary, grand theft to a vehicle, and false identification to a peace officer. *FBI report, dated August 8, 1997*. On May 7, 1992 the applicant was convicted of burglary in the first degree under section 459 of the California Penal Code and sentenced to two years in prison. *Court record, dated May 7, 1992*. On October 15, 1992 the applicant received a prison sentence of four years for violating section 459 of the California Penal Code. *Court record, dated October 15, 1992*. The District Director erred in finding that the applicant was arrested on September 11, 1992 and on October 15, 1992. *Decision of the District Director, dated December 16, 2003*. As counsel clarified, the applicant was in custody serving his second conviction when he requested that the judge bring forward all charges that the State had against him. *Attorney's Brief*. The judge agreed and at that point, the additional charges were brought while the applicant was serving his term in imprisonment for the April 8, 1992 arrest. *Id.* The applicant agreed to a sentence term of four years in state prison. *Id.* The applicant served a reduced sentence of a little over two years due to good behavior. *Id.*

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 -
 - (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 AAO will only address whether the applicant merits a section 212(h) waiver as a matter of discretion, as the District Director found that the applicant had established that his qualifying relatives would suffer extreme hardship upon his departure.

While the AAO does not condone the applicant's serious criminal violations, it acknowledges that the applicant has not had any additional problems with the law and that these offenses occurred over 14 years ago. Since that time, the applicant has earned his GED diploma, attended a vocational school to study air conditioning and heating engineering, and has earned his EPA certification. *Attorney's Brief; See numerous training and award certificates, including his High School Equivalency Certificate.* In 1998, he became a California Licensed Contractor. *See copy of State of California Contractor's State License Board issued to Vic's Heating & A/C dated May 18, 1998.* In 2001, he started attending Los Angeles Mission College to earn an Associates Degree in Business Administration. *Id.; letter confirming petition for graduation from Los Angeles Mission College, dated Fall 2003.* The applicant has received two Dean's Awards, and as of the date of the brief, was scheduled to graduate from college in the summer of 2004. *Id.; certificates of Dean's List, Los Angeles Mission College, dated Fall 2002 and Spring 2002; letter confirming petition for graduation from Los Angeles Mission College, dated Fall 2003.* In 2002 he became one of the first North American Technician Excellence, Inc. (NATE) certified engineers in Southern California. *Id.; NATE certificate, dated September 11, 2002.* The applicant has been an asset to his company and has demonstrated strong work and moral ethics. *Letter of support written by co-worker Denise Robledo dated January 2, 2003.* He has made a successful career in his field, working his way from an apprentice to a management position for Canoga Park Heating & Air Conditioning. *Letter of support written by [REDACTED], President, CPHAC dated January 6, 2003.* The applicant is constantly improving himself and represents his company in a very favorable light, as he is a very good and honest person. *Id.* He has changed his life around and is a different person than he was when he committed the crimes. *Letter of support written by Erick Bergstrom, Sergeant in the 118th Precinct, Bronx, New York City dated January 10, 2004.* He takes care of his family and is a wonderful father. *Id.* The applicant has a close relationship with his U.S. citizen spouse and U.S. citizen son, and he is the sole economic provider of his family. *Affidavit of the applicant's spouse dated January 1, 2003.* A psychological evaluation concluded that the applicant is without a mental disorder or condition, and that the criminal activity of which he was convicted when he was barely an adult has not recurred. *Psychological Evaluation written by [REDACTED], Clinical Psychologist, dated January 11, 2004.* Additionally, the applicant has shown that he is remorseful and accepts responsibility for his past mistakes. *Affidavit of the applicant, dated January 4, 2004.*

The unfavorable factors presented in the application are the applicant's convictions for the crime of forging a name on an access card in 1991 and burglary in the first degree in 1992. The applicant also entered without inspection in February 1990 at San Ysidro, California. *Form I-601; Form I-485.*

The AAO notes that the applicant has not been charged with a crime since his convictions, and the applicant's crimes occurred more than 14 years ago. The applicant has improved himself through high school and college education, and he has a solid work history which includes being promoted to a managerial position. He has close family ties which include a U.S. citizen spouse and child, and he is financially responsible. Although his criminal convictions are serious in nature, the applicant has demonstrated that he has successfully rehabilitated himself since that time.

The applicant has established that the favorable factors in his application outweigh the unfavorable factors. The District Director's denial of the Form 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.