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U.S. Citizenship
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Services

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AUG 03 2007

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under § 212(h) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

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 Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Cuba 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. The applicant is the spouse of a lawful permanent resident of the United States and father of four U.S. citizen adult children. He seeks a waiver of inadmissibility pursuant to § 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his family.

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.

The record reflects that the applicant was convicted of one felony count and five misdemeanor counts of receiving stolen property in the Dade County Circuit Court on April 19, 1977. He is therefore inadmissible under the above section of law.

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 . . .

As the activities for which the applicant was found inadmissible occurred over fifteen years prior to the application for admission, the applicant is eligible for consideration of a waiver pursuant to § 212(h)(1)(A) above. The director concluded that the applicant had failed to establish that he had been

rehabilitated in the thirty years since his conviction of a crime involving moral turpitude. The director further found that the record did not demonstrate that extreme hardship would be imposed on a qualifying relative, as required under § 212(h)(1)(B) of the Act. The director thus denied the Application for Waiver of Grounds of Excludability (Form I-601).

On appeal, counsel contends that Citizenship and Immigration Services (CIS) abused its discretion in failing to find that the applicant had been rehabilitated. Counsel points out that the applicant has not been convicted of any crime involving moral turpitude since 1977, that he is a respected, tax-paying businessman, and that he has been married to the same woman for several decades. On appeal, counsel submits the applicant's marriage certificate and his children's birth certificates. The AAO finds counsel's assertions persuasive and agrees that the record demonstrates rehabilitation.

The AAO notes that in order to qualify for the waiver described under § 212(h)(1)(A) of the Act, the applicant need not establish that his inadmissibility would cause his spouse to suffer extreme hardship. Furthermore, the AAO finds that the evidence meets all the criteria set forth at § 212(h)(1)(A), in that sufficient time has passed since the applicant's conviction, there is no evidence that the applicant's admission to the United States would be contrary to this country's national welfare, safety, or security, and the applicant's stability and lack of further convictions establishes his rehabilitation.

In addition to the evidence relating to his 1977 conviction, the record indicates that the applicant was arrested for aggravated battery in 1976; however, the charges were dropped. He was also arrested in 1996 for driving under the influence, and he was placed on probation for twelve months. The latter does not constitute a crime involving moral turpitude. Although the applicant's criminal record is an unfavorable factor and is accorded considerable weight in this determination, the AAO finds that the positive factors outweigh the negative.

The record reflects that the applicant meets the requirements for waiver of his grounds of inadmissibility under § 212(h)(1)(A) of the Act. The AAO finds that the director erred in failing to find the applicant eligible for the waiver under § 212(h)(1)(A) and in basing his decision on § 212(h)(1)(B) of the Act. 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.