

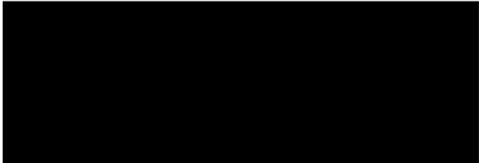
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Services

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FILE:



Office: PHOENIX, ARIZONA

Date: **AUG 29 2007**

[relates]

IN RE:



APPLICATION:

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 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Phoenix, Arizona, 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 record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his United States citizen wife and United States citizen children.

The Acting District Director found that the applicant failed to establish that extreme hardship would be imposed on his qualifying relatives and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated October 27, 2005.

On appeal, the applicant, through counsel, asserts that “[t]he Phoenix District Office failed to apply the correct legal standard and abused its discretion in denying [the applicant’s] I-601 Application for Waiver of Inadmissibility.” *Form I-290B*, filed November 29, 2005. Additionally, counsel states the applicant’s United States citizen wife “would suffer extreme hardship if [the applicant’s] status is not adjusted to that of a lawful permanent resident.” *Id.*

The record includes, but is not limited to, statements from the applicant and his wife, numerous letters of reference from the applicant’s friends, family and co-workers, a psychological evaluation by [REDACTED] regarding the applicant’s wife’s mental health status, and the criminal court disposition from the Superior Court of Arizona, Maricopa County. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on April 22, 1992, the applicant was convicted of aggravated assault by a Superior Court judge in Maricopa County, Arizona, and was sentenced to one (1) year imprisonment and four (4) years probation.

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...

In the present application, the record indicates that on April 22, 1992, a Superior Court judge in Maricopa County, Arizona, convicted the applicant of aggravated assault and sentenced him to one (1) year imprisonment and four (4) years probation for a crime that took place in 1991. On August 11, 1992, the applicant's daughter, [REDACTED], was born in Arizona. On July 23, 1994, the applicant married [REDACTED], a United States citizen. On November 5, 1995, the applicant's son, Anthony, was born in Arizona. On March 29, 1998, the applicant's wife filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On May 13, 1998, the applicant's son, [REDACTED], was born in Arizona. On September 4, 1998, the applicant filed a Form I-601. On October 24, 2000, the applicant's son, [REDACTED] was born in Arizona. On October 18, 2005, the Form I-130 was approved. On October 27, 2005, the Acting District Director denied the Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relatives under section 212(h)(1)(B).

The AAO finds that it has been 15 years since the crime that rendered the applicant inadmissible. The applicant is, therefore, eligible for consideration for a waiver under section 212(h)(1)(A). The record reflects that the applicant has not been convicted of any additional crimes since his last conviction in 1992. There are no convictions on the applicant's record and the record of proceedings 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." Through the applicant's numerous positive character references, he has demonstrated his rehabilitation. The applicant states "my best friend pressured me into doing a crime that I knew was wrong. He made me feel as if I owed him for all he had done for me. I knew the acts were wrong and I felt extremely bad. I would have never done something like this if it hadn't been for his persistence. Since my arrest and conviction there hasn't been a day that goes by that I don't feel remorse." *Letter from the applicant*, dated September 12, 2001. The applicant's wife states that since the applicant's conviction, "[h]e has been a model citizen, abiding by all laws and an active member of the community. [She feels] that he is a rehabilitated man that has made many changes to better himself and his life. The mistake he made when he was younger, is something he has expressed remorse to [her], on more than one occasion." *Letter from [REDACTED]* dated September 7, 2001. [REDACTED] the applicant's father-in-law states the applicant "made a

serious mistake as a young man but [he] can verify that [the applicant] has on his own accord rehabilitated himself.” *Letter from* [REDACTED] dated September 13, 2001. [REDACTED] states the applicant, her son, “has learned a great deal from his unfortunate decisions as a young man. An experience is valuable only when one learns from it. [The applicant] has matured enormously since his time in jail. He demonstrates how it pays to be honest, thankful and respectful to all in each situation he encounters.” *Letter from* [REDACTED] dated September 11, 2001. [REDACTED] states the applicant “has had to triumph over many obstacles...[and the applicant’s] sentencing was lessened a couple of months based on his good behavior and rehabilitation courses.” *Letter from* [REDACTED] dated September 11, 2001. Ms. [REDACTED] states that she “would never guessed [the applicant] was a criminal or committed any criminal type activities. [She] did not know [the applicant] ten years ago but the man [she knows] today would never commit a crime. He sets such positive examples for their children and is always stressing the importance of being a good person to the kids.” *Letter from* [REDACTED] dated September 12, 2001. [REDACTED] states she has worked with the applicant for “three years...[and] not only is he [a] pleasure to work with but is a great person to know.” *Letter from* [REDACTED] dated March 24, 1998. [REDACTED] and [REDACTED] state the applicant “uses his bilingual abilities, daily at his job and outside his job to assist Spanish speaking only patients receive proper medical care.” *Letter from* [REDACTED] dated September 13, 2001. [REDACTED] states that “[i]n the time that [she has] been [the applicant’s] supervisor, [the applicant] has been an outstanding employee. He is always willing to help his fellow co-workers in any way he can.” *Letter from* [REDACTED] dated September 12, 2001. The AAO notes that the applicant has established that he has been working as a Radiology Technician since 1996, and earns the majority of the income for the household. *See letter from* [REDACTED] dated September 9, 2001 (“[The applicant] carries himself modestly and honestly as he is the ‘breadwinner’ of his family and it would be a tremendous financial setback for his wife and four young children if he would not be in a position to provide for them.”); *see also letter from* [REDACTED] dated September 11, 2001 (“[The applicant’s] wife works opposite shifts from him in order to keep the cost of childcare affordable. Without his assistance his family would run into financial problems...[The applicant] made a bad decision a few years back and was convicted of a felony. However, he has already paid his debt back to society. He knows how wrong his decision was and has never repeated a similar offense again.”).

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 United States citizen wife and children would suffer emotional and financial hardship as a result of their separation from the applicant. *Letter from* [REDACTED] the applicant’s wife, *supra* (If the applicant were removed from the United States, the applicant’s wife “would have to sell the house...[she] would no longer be able to afford the vehicle that [they] financed through the bank. [Her] school education would definitely have to stop due to time and money...[The applicant] is a financial, emotional, and spiritual supporter to [their family].”). Additionally, the AAO notes that the applicant’s wife has a history of depression and has had suicidal ideations. *See Psychological Evaluation by* [REDACTED] MA, page 3, dated November 20, 2005. [REDACTED] states the applicant’s wife meets the criteria for Major Depressive Disorder-Recurrent Severe and Acute Stress Disorder. *Id.* at 7. The AAO notes that on October 15, 2002, the applicant’s wife was seen by a physician for depression. *See Physician’s Examination and Data Base, Good Samaritan Regional Medical Center*, dated October 15, 2002.

The favorable factors presented by the applicant are the extreme hardship to his United States citizen wife and children, who depend on him for emotional and financial support; the applicant's stable work history in the United States since 1996; the applicant's history of paying his federal income taxes; and the numerous positive character references.

The unfavorable factors presented in the application are the applicant's conviction for aggravated assault in 1992 and periods of unauthorized presence. The AAO notes that the applicant has not been charged with any crimes since his last conviction.

While the AAO does not condone his actions, 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.