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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: BALTIMORE DISTRICT OFFICE

Date: **AUG 29 2007**

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved.

The applicant, a citizen of Bolivia, was found 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 son of a United States citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his mother. The entire record was reviewed and considered in rendering a decision on this appeal.

Section 212(a)(2) of the Act provides, in pertinent part:

(A)(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 (other than a purely political offense) 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 [now Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (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 District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of

Inadmissibility under section 212(h)(1)(B) of the Act. On appeal, the applicant contends that his mother would suffer extreme hardship if he were removed to Bolivia.

However, the AAO finds the analysis as to whether the applicant's mother would suffer extreme hardship if the applicant were removed to Bolivia unnecessary, as a waiver of inadmissibility is now available to the applicant under section 212(h)(1)(A) of the Act. The applicant pleaded guilty to the crime of "theft: less than \$300 value" on July 9, 1991. Therefore, the crime involving moral turpitude for which the applicant was found inadmissible occurred more than fifteen years ago. The record indicates that the applicant has not been charged with any crimes since his guilty plea in 1991, when he was twenty-two years of age, which indicates rehabilitation. Nor does the record establish that the applicant's admission to the United States would be "contrary to the national welfare, safety, or security of the United States."

The record also indicates that the applicant has been rehabilitated. In her December 22, 2005 affidavit, [REDACTED] a clinical social worker, states her opinion regarding the applicant's rehabilitation which, in her opinion, is complete. She notes the passage of time since his crime, the fact that he has committed no crimes since that time, and states that since then he has dedicated himself to assisting his family build a new life in the United States. In her opinion, the applicant has rehabilitated since his commission of the crime involving moral turpitude.

The record, therefore, reflects that the applicant meets the requirements for waiver of his grounds of inadmissibility under section 212(h)(1)(A) of the Act. However, the grant or denial of the waiver does not turn only on the mere passage of fifteen years of time. It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe.

The favorable factors in this matter are the applicant's United States citizen mother, subsequent rehabilitation, gainful employment, and the passage of sixteen years since his violation. The unfavorable factor in this matter is the applicant's criminal violation.

The AAO finds that the crime committed by the applicant was serious in nature and cannot be condoned. Nonetheless, it finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved.