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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Room 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H2

PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]

Office: DENVER (SALT LAKE CITY)

Date: DEC 12 2007

IN RE:

[REDACTED]

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:

[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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Denver, Colorado, 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 Honduras, was found inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a crime involving a controlled substance. The applicant is the father of two United States citizen children and 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), in order to remain in the United States with his wife and children.

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

- (1) Criminal and related grounds. —
 - (A) Conviction of certain crimes. —
 - (i) In general. — Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of —
 - (II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

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

- (h) The Attorney General [now the Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) or subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana 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 his children and spouse, the qualifying relatives, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant contends that his wife and children would suffer extreme hardship if he is required to return to Honduras. The entire record was reviewed and considered in rendering a decision on the appeal.

However, the AAO finds the analysis as to whether the applicant's mother would suffer extreme hardship if the applicant were removed to Honduras unnecessary, as a waiver of inadmissibility is available to the applicant under section 212(h)(1)(A) of the Act. The applicant was arrested and convicted of the possession of less than twenty grams of marijuana in June 1982. Therefore, the crime 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 1982, when he was twenty-eight years of age. 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. The applicant has demonstrated remorse for his actions, has gainful employment, pays taxes, and has not been charged with any crimes since 1982.

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 daughters, permanent resident spouse, rehabilitation, gainful employment, payment of taxes, and the passage of twenty-five 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.