



U.S. Citizenship  
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Services

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FILE:



Office: CHICAGO, IL

Date: JAN 09 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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Poland 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 crimes involving moral turpitude. The record indicates that the applicant is married to a United States citizen spouse and that 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, United States citizen son, and legal permanent resident son.

The district director found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated August 5, 2004.

On appeal, the applicant, through counsel, asserts that because Citizenship and Immigration Services (CIS) failed to indicate how it obtained the applicant's Polish criminal record, that the information must be factually inaccurate. *Brief Submitted in Support of Timely Filed Notice of Appeal*, filed April 18, 2005. However, counsel failed to provide any evidence demonstrating that the applicant was not convicted of numerous theft offenses in Poland. The AAO notes that the applicant's criminal records were obtained by the legacy Immigration and Naturalization Service (INS) office in Vienna, Austria, at the time of the applicant's initial application for a visa in 1994. It was the discovery of his convictions that made him inadmissible at that time, resulting in the filing of the Form I-601 on August 11, 1994. Counsel further asserts that the denial of the applicant's admission into the United States would result in extreme hardship to his United States citizen wife, United States citizen son, and legal permanent resident son. Additionally, counsel claims that the applicant would have difficulty obtaining employment in Poland because of his advanced age. *Form I-290B*, filed October 1, 2004.

The record includes, but is not limited to, counsel's brief, the decision on the applicant's adjustment of status application (Form I-485), the decision on the applicant's Form I-601, Polish criminal court dispositions, and affidavits from the applicant's wife and children. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on December 11, 1981, the applicant was convicted of two charges of violating Article 208 of the Polish People's Republic Penal Code, stealing in a particularly audacious manner of breaking and entering, and was sentenced to 3 years and 6 months imprisonment, for the first charge, and 1-year imprisonment, for the second charge. On November 28, 1983, the applicant was convicted of violating Articles 208 and 203 of the Polish People's Republic Penal Code, stealing in a particularly audacious manner of breaking and entering and taking away someone else's movable property, and was sentenced to 4 years imprisonment.

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...

The applicant was convicted of breaking and entering on December 11, 1981. On November 28, 1983, the applicant was convicted of breaking and entering and theft. It is noted that on January 21, 1995, the Polish Department of Justice removed the applicant from their central registration of convicted, based on the sentences being "too severe for the actions taken by the convicted." *See evidence submitted with Form I-485*, dated January 10, 2000. The applicant applied for adjustment of status on January 27, 2000. *Form I-485*, dated January 10, 2000. Therefore, the crimes involving moral turpitude for which the applicant was found inadmissible occurred more than 15 years prior to the applicant's application for adjustment of status.

The AAO finds that the district director erred in basing his decision on section 212(h)(1)(B) of the Act and failing to consider the eligibility of the applicant for 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 1983. It is noted that on September 4, 1997, the applicant was arrested for theft under \$300, in Cook County, Illinois; however, he was not convicted of any crime. 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."

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 spouse and children would suffer emotional and financial hardship as a result of their separation from the applicant. *Affidavit from* [REDACTED] [REDACTED] dated June 15, 2004 ("I suffer from high blood pressure, depression, and occasional panic attacks and require emotional and financial support of my husband...I am currently employed but my continued employment is dependent on my mental and physical condition."); *Statement from* [REDACTED] M.D., dated May 25, 2004 ("Mrs [REDACTED] has been a patient...for 3 years...[she] suffers from hypertension, depression and panic attacks."); *Affidavit from* [REDACTED] the applicant's step-son ("One of [my] jobs is a construction business that I co-own with my step-father, without him it would not be progressing as it is...The company that we co-own is a well progressing business that employs 7 people."); *Affidavit from* [REDACTED] the applicant's son ("My father is making my hopes become a reality, he provides me with constant support and encouragement.").

The favorable factors presented by the applicant are the extreme hardship to his United States citizen wife, United States citizen son, and legal permanent resident son, who depend on him for emotional and financial support; the applicant's stable work history in the United States since 1997; and the applicant's history of paying his federal income taxes since 1997.

The unfavorable factors presented in the application are the applicant's convictions for breaking and entering and theft in 1981 and 1983, his entry without admission, and periods of unauthorized presence. The AAO notes that the applicant has not been charged with any crimes since his last conviction and the applicant's crimes occurred more than 15 years ago, demonstrating the applicant's rehabilitation.

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.