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

H₂

FILE:

Office: LOS ANGELES, CALIFORNIA

Date: JUN 14 2007

IN RE:

PETITION: 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.

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

The applicant is a native and citizen of Bolivia 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 crimes involving moral turpitude, namely, petty theft. The applicant is the father of a U.S. citizen son and daughter and also of a lawful permanent resident (LPR) son and daughter. The applicant 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.

The district director concluded that the applicant had 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. On appeal, counsel asserts that Citizenship and Immigration Services (CIS) failed to analyze the cumulative effect of the hardship factors presented. Counsel contends that the applicant has provided evidence establishing extreme hardship to his qualifying relatives.

The record reflects that on March 9, 1988, the applicant was arrested for the misdemeanor crime of petty theft with a prior conviction. Prior to that, on July 20, 1983, he was arrested for the misdemeanor crime of theft of personal property. He was convicted of both of these crimes in the Municipal Court of Los Angeles, California. The record also contains documentation regarding two other arrests: one on December 12, 1996, for driving a vehicle with a blood alcohol level over .08 per cent and the other on October 11, 1991 for grand larceny from an automobile. In connection with the 1996 arrest, the applicant plead no lo contendere and was convicted in the municipal Court of Los Angeles. The 1991 arrest, which occurred in Falls Church, Virginia resulted in the dismissal of the charge.

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 criminal activities for which the applicant was found inadmissible occurred more than fifteen years prior to the applicant's application for adjustment of status; thus, he may be considered for a waiver under § 212(h)(1)(A) of the Act. There is no evidence on the record to suggest that the applicant's admission would be contrary to U.S. national welfare, safety, or security. The evidence also establishes the applicant's rehabilitation, despite the alcohol-related conviction of 1996, which does not relate to a crime involving moral turpitude.

The AAO places substantial negative weight on the applicant's convictions of petty theft in 1983 and 1988, and takes into account the 1996 alcohol-related infraction. However, the latter violation does not appear to be a part of any behavioral pattern, as there were no other similar arrests prior to or subsequent to the arrest of record, and there is no indication that the applicant caused any harm to person or property. Moreover, the AAO notes that the crimes involving moral turpitude occurred over fifteen years prior to this application, and the applicant was never convicted of any other crime involving moral turpitude.

Although the record contains negative factors, the positive factors weigh more heavily. The evidence establishes that the applicant has been continuously employed and that he pays federal taxes. The record includes numerous statements from his children attesting to the positive role the applicant plays in their and their children's lives. The applicant's children write that the applicant's absence would cause them and their children to suffer great emotional hardship. These positive factors carry great weight.

In sum, the record establishes that the favorable factors in this application outweigh the unfavorable factors.

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 met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the application is approved.