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U.S. Citizenship
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Services

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HR2

JUN 22 2007

FILE:

Office: LOS ANGELES, CA

Date:

RELATES)

IN RE:

PETITION: 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 PETITIONER:

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, 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 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 in 1982. The applicant is the spouse of a U.S. citizen and has five U.S. citizen children. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his wife and children.

The district director found that there was no evidence in the affidavit or the record to support a finding that the applicant's spouse would experience any extreme hardship. The application was denied accordingly. *District Director's Decision*, dated April 27, 2006.

On appeal, counsel asserts that the district director erred in not considering the applicant's eligibility for a waiver under section 212(h)(1)(A) of the Act because over 15 years have passed since the applicant's conviction. In addition, counsel contends that the district director erred in stating that only hardship to the applicant's spouse could be considered in his waiver application when children may be considered in section 212(h) waiver proceedings. *Attachment to Form I-290B*, dated May 16, 2006.

The record reflects that on October 22, 1982, the applicant was convicted of Voluntary Manslaughter and sentenced to 2 years in prison.

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 . . .

Based on the evidence of record, the AAO finds the applicant to be eligible for a waiver of inadmissibility under section 212(h) of the Act. Therefore, it will not consider whether the applicant on appeal has overcome the district director's determination that he failed to establish that a qualifying relative would suffer extreme hardship if he were removed from the United States.

The applicant was convicted of Voluntary Manslaughter in October 1982 based on events that occurred in June 1982. The applicant applied for lawful permanent residence on January 19, 2006. Therefore, the crime involving moral turpitude for which the applicant was found inadmissible occurred more than 15 years prior to the applicant's application for lawful permanent residence.

The record contains no evidence that would indicate that the admission of the applicant to the United States would be "contrary to the national welfare, safety, or security of the United States." Moreover, the record reflects that the applicant has not been charged with any additional crimes since his conviction in 1982, more than 25 years ago, and is successfully employed as a mechanic, as demonstrated by an employer letter stating that the applicant is an excellent employee with a good future. *Employer Letter*, dated April 15, 1998. Evidence in the record also demonstrates that the applicant is an active father, helping his three youngest daughters with their school work. *Applicant's Statement*, undated. The record, therefore, offers proof of the applicant's rehabilitation. Accordingly, the applicant has met the criteria for a waiver of inadmissibility listed in section 212(h)(1)(A) of the Act.

The AAO now turns to a consideration of whether the record also establishes that the applicant merits the exercise of the Secretary's discretionary authority to waive his inadmissibility.

The only unfavorable factor presented in the application is the applicant's conviction for Voluntary Manslaughter in October 1982. While the AAO notes the serious nature of the applicant's offense, it, nevertheless, finds this negative to be outweighed by factors in the applicant's favor, which include: the absence of any criminal record for 25 years; the applicant's employment as a mechanic; his five U.S. citizen children, one of whom is serving in the U.S. Army; and his 20 years of marriage to a U.S. citizen.

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 and the application approved.

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