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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

*He*

**PUBLIC COPY**

[Redacted]

FILE: [Redacted]

Office: LOS ANGELES, CALIFORNIA

Date: MAY 03 2007

IN RE: Applicant: [Redacted]

APPLICATION: 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:

[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*

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 § 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's wife, mother, and children are U.S. citizens, his father is a lawful permanent resident (LPR), and the applicant is the beneficiary of an approved petition for alien relative. 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 wife and children.

The district director concluded that the applicant had 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. On appeal, counsel submits a brief and certain documents; however, he also indicates that he requires 180 days to obtain and review the applicant's complete record of proceedings, after which he would submit a brief and/or additional evidence. As of this date, the AAO has received no evidence in addition to that which accompanied the appeal; hence the record is complete.

Counsel contends that CIS gave the applicant incorrect instructions, preventing him from submitting all the required evidence to establish the requisite hardship to his qualifying relatives. Counsel asserts that on the instruction letter accompanying the Form I-601 sent to the applicant, Citizenship and Immigration Services (CIS) incorrectly checked a box that notes that if the applicant is inadmissible due to misrepresentation or overstay, his children are not considered qualifying relatives. The AAO points out that the instruction in question does not state that the applicant *is* inadmissible due to misrepresentation or overstay, but rather it begins with the word "if." The AAO does not find that the instruction sheet misled the applicant, such that he was effectively denied the opportunity to present necessary evidence.

Counsel submits evidence on appeal to establish the fact that the applicant has qualifying relatives in addition to his U.S. citizen wife, i.e., his two children and his parents. On March 30, 2007, counsel was invited to resend to the AAO any additional documentation which he might have previously submitted in conjunction with the appeal; however, counsel failed to respond. The AAO has reviewed the entire record in rendering this decision on appeal.

The record reflects that on September 22, 1990, the applicant was arrested and charged with second degree robbery pursuant to § 211 of the California Penal Code. The applicant, who was eighteen years old at that time, plead guilty and was sentenced to one year in jail and five years of probation. In his letter dated August 8, 2004, the applicant wrote that he served six months in jail and three years of probation. The evidence of record supports the claim that the applicant's probation was terminated early.

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 arrested for the robbery on September 22, 1990, which is over fifteen years prior to this application. Therefore, the AAO has considered his eligibility for a waiver under § 212(h)(1)(A) of the Act and finds that the applicant meets the requirements set forth in this section.

There is no information on the record to indicate that the applicant's admission to the United States would be "contrary to the national welfare, safety, or security of the United States." There is, in contrast, evidence establishing that the applicant has been rehabilitated. The record reflects that the applicant has not been charged with any additional crimes since his youthful arrest in 1990. The evidence also establishes that the applicant has been married to the same U.S. citizen woman since 1991, that he has two U.S. citizen children who are thriving in school, that he owns real property and pays taxes, and that he has been steadily employed. Furthermore, the applicant's closest relatives, including his parents and siblings are U.S. citizens or LPRs.

The only unfavorable factor presented in the application is the applicant's 1990 conviction for Robbery. The AAO recognizes that the crime is a significant negative factor in this determination; however, the evidence has established that the favorable factors outweigh this unfavorable factor. The record reflects that the applicant meets the requirements for a waiver of his grounds of inadmissibility under § 212(h)(1)(A) of the Act.

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.