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U.S. Citizenship  
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Services

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MAY 18 2007

FILE:

Office: HARLINGEN, TEXAS

Date:

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Harlingen, Texas, 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, in that he was convicted of voluntary manslaughter in Illinois on October 31, 1962. The applicant is the spouse of a lawful permanent resident of the United States and the father of three U.S. citizens. The applicant seeks a waiver of inadmissibility pursuant to § 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may adjust his status to that of permanent resident and remain in the United States with his family.

On appeal, counsel contends that the applicant's family would suffer hardship if he were removed from the United States. In addition, counsel stresses the discretionary factors that weigh in the applicant's favor, including his long residence in the United States, his lack of a criminal record outside of the conviction which rendered him inadmissible, his substantial ties to the United States and lack of ties to Mexico, and mitigating factors behind the conviction itself. Upon review of the record, the AAO finds that the district director erred in failing to consider the applicant's eligibility for a waiver under § 212(h)(1)(A), in view of the fact that over fifteen years have passed since the time of the applicant's criminal activity. The AAO concludes that the applicant is eligible for a waiver under § 212(h)(1)(A) of the Act.

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.

On October 31, 1962, the applicant was convicted of voluntary manslaughter in the Circuit Court of Lee County, Illinois. He was sentenced to a minimum term of confinement of eight years but was paroled on January 27, 1966 after a period of only thirty nine months.

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 crime involving moral turpitude for which the applicant was found inadmissible occurred well over fifteen years prior to the instant application; hence, the waiver application may be considered pursuant to the provisions of § 212(h)(1)(A) of the Act. There is no evidence 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 shows that the applicant has not engaged in any criminal activity subsequent to his 1962 conviction. The applicant’s immediate family consists of U.S. citizens and lawful permanent residents, and the applicant himself has been living in the United States since 1981. Upon review of the record, it appears that he has been rehabilitated. The only unfavorable factor present in the application is the applicant’s 1962 conviction.

The AAO accords significant weight to the applicant’s conviction of voluntary manslaughter; however, the applicant committed the crime when he was twenty one years old, and he is now sixty six. In the ensuing forty five years since his crime, the applicant has accrued sufficient positive equities to outweigh the unfavorable factor. The record reflects that the applicant meets the requirements for 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 met that burden. Accordingly, the appeal will be sustained.

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