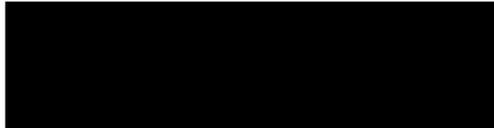


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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

Applicant:



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

The record reflects that the applicant is a native and citizen of Peru who was found to be inadmissible to the United States pursuant to 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. The record indicates that the applicant is married to a naturalized United States citizen and 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 spouse, daughter, and lawful permanent resident mother.

The 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. *Decision of the Director*, dated May 24, 2006.

On appeal, the applicant, through counsel, asserts the Director “did not use the proper legal standard in denying the I-601 waiver as the conviction occurred more than fifteen years prior to the application for the waiver of excludability.” *Form I-290B*, filed June 20, 2006. Additionally, counsel contends that the applicant “was denied due process of law” and the Director failed to “discuss hardship to the other two qualifying relatives, the applicant’s United States citizenship [sic] daughter and his lawful permanent resident mother.” *Id.*

The record includes, but is not limited to, counsel’s brief, affidavits from the applicant and his wife, and court dispositions for the applicant’s arrests and convictions. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on June 10, 1988, the applicant was convicted of criminal possession of stolen property in the third degree by the Supreme Court of the State of New York, Queens County, and was sentenced to five (5) years probation.

Section 212(a) of the Act provides, in pertinent part, that:

(A) *Conviction of certain crimes.*—

- (i) In general.—Except as provided in clause (ii), any 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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime...

Section 212(h) of the Act provides, in pertinent part, that:

- (h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in his

discretion, waive the application of subparagraphs (A)(i)(I)...of subsection (a)(2) if—

(1) (A) in the case of any immigrant it is established to the satisfaction of the [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 established to the satisfaction of the [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...

(2) the [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

The applicant was convicted of criminal possession of stolen property in the third degree on June 10, 1988. The applicant applied for adjustment of status on February 18, 2004. *Form I-485*, filed February 18, 2004. 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 adjustment of status.

The AAO finds that the 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 a waiver under section 212(h)(1)(A). The record reflects that on June 24, 2005, the applicant was convicted of driving while ability impaired. The AAO notes that the applicant's conviction for driving while ability impaired is a traffic infraction; therefore, the applicant has not been convicted of any additional criminal charges since his last conviction in 1988. The AAO notes that the applicant was discharged early from his probation on April 9, 1991. *See Letter from William Golchas, Probation Officer*, undated. There are no additional convictions on the applicant's record further attesting to his rehabilitation 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 daughter would suffer hardship as a result of their separation from the applicant. *Affidavit from* [REDACTED] dated June 3, 2005 ("[The applicant] had a legal problem over seventeen years ago. [She] would be devastated if [the applicant] were sent back to Peru. [She is] not working and presently going to school. [Their] rent has just increased to \$1500.00 and [she] would not be able to afford the apartment without [the applicant]. [The applicant] is also paying for [their] health insurance. If [the applicant] were deported [she] would not be able to go to Peru because [she] want[s] [their] daughter to grow up an American. The healthcare in Peru is not good and [her] [sic] needs good doctors. [They] could not go to Colombia because people are being shot on the street.").

The favorable factors presented by the applicant are the hardship to his United States citizen wife and daughter, who depend on him for emotional and financial support; the applicant's stable work history in the United States; the applicant's history of paying his federal income taxes; and the lack of any other criminal convictions since his last conviction in 1988.

The unfavorable factor presented in the application is the applicant's conviction for criminal possession of stolen property in 1988. The AAO notes that the applicant has not been charged with any criminal violations since his last conviction and the applicant's crime occurred more than 19 years ago.

While the AAO does not condone his actions, the applicant has established that the favorable factors in his application outweigh the unfavorable factors. The Director's denial of the I-601 application is withdrawn.

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.