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FILE:

Office: HONOLULU, HAWAII

Date: DEC 18 2008

IN RE:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Honolulu, Hawaii, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of South Korea 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 applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States.

The district director concluded 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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated November 28, 2005.

On appeal, counsel for the applicant contends that the applicant has not been convicted of a crime involving moral turpitude, as the conduct for which he was convicted in Korea is not a crime in the United States. *Statement from Counsel on Form I-290B*, submitted November 12, 2007. Counsel further asserts that the applicant has submitted sufficient evidence to show that his wife, daughter, and mother will suffer extreme hardship should he be compelled to depart the United States. *Id.* Counsel asserts that the applicant warrants a favorable exercise of discretion. *Id.*

The record contains a brief from counsel; a letter from the applicant's wife's employer; medical documentation for the applicant's wife; an evaluation of the applicant's wife's mental health from a licensed psychologist; documentation in connection with the applicant's criminal convictions in South Korea; statements from the applicant; documentation of the applicant's payment of child support; a copy of the applicant's marriage certificate; copies of the applicant's wife's naturalization certificate and U.S. passport, and; a copy of the applicant's daughter's birth certificate. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2) of the Act states in pertinent part, that:

- (A)(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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

- (h) The Attorney General [now Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) [or] (B) . . . 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

- (1) (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 [now the Secretary of Homeland Security (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 record reflects that the applicant was convicted of embezzlement in South Korea on March 15, 1991, for which he received a jail sentence of four years incarceration. The applicant stated that he was further convicted of Credit Card Fraud and Insufficient Checks in 1987, for which he received a sentence of 10 months incarceration. The U.S. Board of Immigration Appeals has deemed embezzlement a crime involving moral turpitude. *Matter of Batten*, 11 I&N Dec. 271 (BIA 1965). Thus, the applicant was found inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude.

On appeal, counsel contends that the applicant has not been convicted of a crime involving moral turpitude, as the conduct for which he was convicted in South Korea is not a crime in the United States. *Statement from Counsel on Form I-290B*, submitted November 12, 2007. Counsel claims that the applicant's convictions were only for failing to pay debts related to credit card charges, which is not a crime in the United States. *Id.* However, the applicant has not submitted sufficient evidence to show the precise conduct for which he was convicted. Nor has the applicant submitted documentation to show the Korean law under which he was convicted, such that the AAO can determine whether failure to repay credit card debt could have been a basis for his conviction. In immigration proceedings, the law of a foreign country is a question of fact which must be proven if the applicant relies on it to establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973). The applicant has not submitted any other documentation that may serve to show the facts of his convictions outside the United States. Accordingly, the applicant has not

established that his conviction for embezzlement in South Korea should be treated differently than a conviction for embezzlement in the United States. As embezzlement is a crime involving moral turpitude in the United States, based on the record the applicant was properly deemed inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

In examining whether the applicant is eligible for a waiver, the AAO will assess whether he meets the requirements of section 212(h)(1)(A) of the Act. The applicant's most recent conviction for which he is inadmissible occurred on or before March 15, 1991. As this event took place over 15 years ago, he meets the requirement of section 212(h)(1)(A)(i) of the Act.

The record does not reflect that admitting the applicant would be contrary to the national welfare, safety, or security of the United States. Section 212(h)(1)(A)(ii) of the Act. The record does not show that applicant has engaged in criminal activity since his conviction in 1991. There is nothing in the record that suggests that the applicant has exhibited violent behavior at any time. The applicant has not been a public charge or an otherwise burden on the United States since his arrival in 1994. The applicant committed his crimes outside of the United States, prior to his arrival. Accordingly, the applicant has shown that he meets the requirement of section 212(h)(1)(A)(ii) of the Act.

The applicant has shown by a preponderance of the evidence that he has been rehabilitated. Section 212(h)(1)(A)(iii) of the Act. As discussed above, there is no evidence that he has engaged in criminal activity since his conviction in South Korea in 1991. The record shows that he has conducted himself well during his 14 years in the United States, including providing economic support for his child and helping to care for his U.S. citizen wife who suffers from asthma, critically severe obstructive lung disease, and mental health problems. *Letter from [REDACTED] dated August 28, 2004; Report from [REDACTED] dated June 6, 2006.* The record does not reflect that the applicant has a propensity to engage in further criminal activity. Accordingly, the applicant has shown that he meets the requirement of section 212(h)(1)(A)(iii) of the Act.

Based on the foregoing, the applicant has shown that he is eligible for consideration for a waiver under section 212(h)(1)(A) of the Act.

In determining whether the applicant warrants a favorable exercise of discretion under section 212(h) of the Act, the Secretary must weigh positive and negative factors in the present case.

The negative factors in this case consist of the following:

The applicant has been convicted of crimes, including embezzlement, credit card fraud, and insufficient checks. It is noted that the applicant entered the United States on September 2, 1994 pursuant to an F-1 student visa. He has not asserted or established that he continued to engage in a course of study from the time of his entry until July 12, 2000, the date he filed a Form I-485 application to adjust his status to permanent resident. Thus, he has not shown that he maintained compliance with the requirements of his F-1 status.

The positive factors in this case include:

The applicant has significant family ties to the United States, including his wife and daughter; the applicant has not been convicted of a crime since 1991, in approximately 17 years; the applicant pays child support for his daughter in the United States; the applicant provides support and assistance to his U.S. citizen wife who suffers from asthma, critically severe obstructive lung disease, and mental health problems; the record suggests that the applicant has continued to engage in employment to meet his and his family's needs.

The positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden that he merits approval of his application.

ORDER: The appeal is sustained.