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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office:

TAMPA, FL

Date:

DEC 18 2006

IN RE: Applicant:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(h)
of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)i)

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Tampa, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved. The matter will be returned to the acting district director for continued processing.

The applicant is a native and citizen of Lebanon. The record establishes that in August 1991, the applicant pled guilty to the charge of Aggravated Assault, a violation of section 784.021 of the Florida Code, based on a September 1990 incident and subsequent arrest. The adjudication was withheld; the applicant was placed on probation for one year. The applicant is thus deemed to be inadmissible for having committed 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 reside in the United States with his U.S. citizen mother.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated April 10, 2006.

In support of the appeal, counsel for the applicant submits a brief, dated June 7, 2006, with referenced exhibits. The entire record was reviewed and considered in rendering this decision.

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

(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:

The Attorney General [now Secretary, 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 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
- (2) The Attorney General (Secretary), in his discretion . . . has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

The AAO finds the analysis as to whether the applicant's qualifying relative would suffer extreme hardship if the applicant were removed to Lebanon unnecessary, as a waiver of inadmissibility is available to the applicant under section 212(h)(1)(A) of the Act. The above-referenced crime involving moral turpitude occurred more than fifteen years ago. The record does not establish that the applicant's admission to the United States would be contrary to the national welfare, safety, or security of the United States. Moreover, the record indicates that the applicant has not been convicted of any crimes since the above-referenced incident in 1990, which indicates rehabilitation.

To further support the applicant's rehabilitation, the applicant's U.S. citizen mother provides a letter. The applicant's mother states,

My name is [REDACTED], born August 15, 1925, a U.S. citizen. I suffer from severe osteoporosis and arthritis. I have pain in my joints, wrists and lower and upper back. Several weeks ago, I started having extreme neck pains that made turning my head impossible. I could not even rest in a sleeping position. The neck pain has not gone away since then, but the level of pain is chronic and has lessened. I have trouble grabbing objects with pain and cannot bend down to lift any heavy objects. The doctor tells me that my bones are very fragile and I should take extreme care to prevent any fractures. My son [REDACTED] [the applicant] lives with me and he stays with me constantly all day long, every day. He does all the household chores for me, under my supervision. He prepares my meals, washes the dishes, cleans the house, does the beds and even my laundry. Whenever I need anything, he walks to the nearby supermarket to purchase my groceries and necessary personal items. He accompanies me and stays with me on all my doctors

visits. I am not employed and do not have any income except for government assistance in form of SSI and food stamps....

Letter from [REDACTED], dated May 17, 2006.

Evidence of the applicant's mother's disability has been provided. *See Report of Confidential Social Security Benefit Information*, dated June 1, 2006. In addition, the applicant's mother's treating physician states the following:

[REDACTED] [the applicant's mother] has been under my care for several years. She has severe osteoporosis, osteoarthritis with multiple joint involvement, hypertension and hyperlipidemia. Given her age and multiple medical comorbidities, I do not feel that she is able to live alone, nor is she able to afford outside home health care assistance. Her needs would be best met by care provided by her family, especially her son, [REDACTED] [the applicant], who provides continual assistance....

Letter from [REDACTED], dated May 18, 2006.

The record reflects that the applicant meets the requirements for a waiver of inadmissibility under section 212(h)(1)(A) of the Act. Further, the AAO notes that the applicant's U.S. citizen mother would suffer physical and emotional hardship as a result of her separation from the applicant. However, the grant or denial of the waiver does not turn only on the mere passage of fifteen years of time. It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, “[B]alance the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented on the alien’s behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. “ *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the applicant’s mother and siblings, residing in the United States as U.S. citizens or lawful permanent residents, the hardships that the qualifying relatives would face if the applicant were not present in the United States, in light of the applicant’s mother’s long-term disability and her need for the applicant’s daily support and assistance, the applicant’s long-term care of his mother, community ties, and the passage of more than 18 years since the violation that lead to conviction of a crime involving moral turpitude. The unfavorable factors in this matter are the applicant’s criminal conviction and periods of unauthorized presence in the United States.

The crime committed by the applicant was serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary’s discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved. The acting district director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.