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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

DEC 19 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director of the California Service Center denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be sustained.

The applicant, [REDACTED], is a native and citizen of Cuba who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i), for having committed a crime involving **moral turpitude**. The Form I-485, Application to Register Permanent Resident or Adjust Status, indicates that the applicant is applying for adjustment to permanent resident status under Section 1 of the Cuban Adjustment Act (CAA). The applicant sought a waiver of inadmissibility under section 212(h) of the Act, which the director denied, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the Director*, dated May 1, 2006.

The AAO will first address the finding of inadmissibility.

Section 212(a)(2) of the Act states 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 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines “conviction” for immigration purposes as:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.

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 . . .

On August 8, 1988, a jury verdict in the United States District Court, Southern District of Florida, found the applicant guilty of:

- count 1, conspiracy to engage in racketeering in violation of 18 U.S.C. § 1962d and 1963;
- count 2, racketeering in violation of 18 U.S.C. § 1962c and 1963;
- count 12, conspiracy to commit robbery in violation of 18 U.S.C. § 1951; and
- count 13, robbery in violation of 18 U.S.C. § 1951.

The court ordered [REDACTED] to forfeit \$316,900 as to each of counts 1 and 2; and sentenced him to 20 years imprisonment with the sentences of counts 1, 2, 12, and 13 to run concurrently; and made him eligible for parole after serving one-third of his term. [REDACTED] committed the crimes related to count 1 in 1983 and 1984 and the crimes of counts 2, 12, and 13 in 1984. Counsel does not dispute the director's finding that the applicant's convictions involve moral turpitude.

The AAO notes that the applicant's convictions occurred at least 20 years ago. Section 212(h)(1)(A) of the Act provides that the Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I) of subsection (a)(2) if 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. Since the criminal convictions for which the applicant was found inadmissible occurred more than 15 years ago, they are waivable under section 212(h)(1)(A)(i) of the Act.

Section 212(h)(1)(A)(ii) of the Act requires that the applicant's admission to the United States not be contrary to the national welfare, safety, or security of the United States and the applicant must establish that he has been rehabilitated. The Certificate of Parole dated April 11, 1994, suggests that the applicant's admission to the United States would not be contrary to the national welfare, safety,

or security of the United States. The certificate states that the applicant is eligible to be paroled and that the “prisoner’s release would not . . . jeopardize the public welfare.” The applicant’s parole ended on August 13, 2007.

To establish that the applicant has been rehabilitated, the record contains 11 letters from the applicant’s family members and letters regarding his employment. The letters in the record by Mr. [REDACTED]’s family members and the letter by his work partner commend [REDACTED]’s character. The letter in the record by the controller of World Waste Services, [REDACTED]’s employer, indicates that [REDACTED] has good moral character, and the controller states that [REDACTED] has been employed there since September 1, 2003. The AAO finds that the submitted evidence attesting to Mr. [REDACTED]’s character is sufficient to demonstrate [REDACTED] has been rehabilitated, as required by section 212(h)(1)(A)(ii) of the Act.

The AAO also finds that the applicant merits a waiver based on discretion. The applicant has established that the favorable factors in his application outweigh the unfavorable factors. The favorable factors are the applicant’s steady work history, payment of taxes, and letters of commendation from friends and co-workers; the negative factors are his convictions. The AAO finds that the favorable factors outweigh the unfavorable factors, an approval of the I-601 application is therefore proper.

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.