



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES, CA

Date:

FEB 08 2008

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Los Angeles, California, denied the Application for Waiver of Ground of Excludability (Form I-601). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved.

The applicant, a citizen of Mexico, was found inadmissible to the United States under 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 crimes involving moral turpitude. The applicant sought 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 with his U.S. citizen spouse and children.

The district director concluded that that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601 accordingly. *Decision of the District Director*, dated September 14, 2005.

In support of the appeal, counsel submitted a legal brief, dated November 11, 2005. 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:

(h) 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.

Regarding the applicant's grounds of inadmissibility, the record reflects the commission of multiple crimes involving moral turpitude. The applicant was convicted of a felony, Robbery, a violation of section 211 of the California Penal Code, based on a November 6, 1990 incident and arrest. In addition, on October 23, 1992 the applicant was convicted of a violation of section 288(a) of the California Penal Code, Lewd Acts With a Child Under 14.<sup>1</sup> The District Director found the applicant inadmissible based upon the applicant's commission of the above-referenced crimes involving moral turpitude.<sup>2</sup> As the crimes were committed after

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<sup>1</sup> The AAO notes that the applicant does not dispute the district director's finding that the offenses outlined constituted crimes involving moral turpitude.

<sup>2</sup> The district director also noted in her decision that the applicant had been convicted of a third crime involving moral turpitude, namely, violating section 290(a)(1)(a) of the California Penal Code, Failing to Register as a Sex Offender; he was sentenced to nine days in jail, was put on probation for three years and was required to pay restitution fines. Section 290(a)(1)(A) of the California Penal Code states, in pertinent part,

Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

The Board of Immigration Appeals ("Board") held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992) that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general.

the applicant's eighteenth birthday, the district director correctly found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The AAO finds the analysis as to whether the applicant's qualifying relatives would suffer extreme hardship if the applicant were removed to Mexico unnecessary, as a waiver of inadmissibility is now available to the applicant under section 212(h)(1)(A) of the Act. The applicant's conviction for Robbery was based on a December 9, 1991 incident and the applicant's conviction for Lewd Acts With a Child Under 14 was based on a July 1992 incident. Therefore, the crimes involving moral turpitude for which the applicant was found inadmissible 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 involving moral turpitude since 1992, which indicates rehabilitation.

To further support the applicant's rehabilitation, the applicant's spouse provides a declaration. In said declaration, the applicant's spouse states:

...I am married to [redacted] [the applicant]. We were married in November 1997. We first met in or about 1987 at my parent's house. [redacted] was renting a room from my family, I saw him almost everyday. During the time that he spent at

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Assault may or may not involve moral turpitude. Simple assault is generally not considered to be a crime involving moral turpitude.

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

The Board further held, in *Matter of Tobar-Lobo*, 24 I&N Dec. 143 (BIA 2007) that willful failure to register by a sex offender, in violation of section 290(g)(1) of the California Penal Code, is a crime involving moral turpitude. Section 290(g)(1) of the California Penal Code provides, in pertinent part:

(g)(1) Any person who is required to register under this section based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment...not exceeding one year.

The AAO distinguishes between *Matter of Tobar-Lobo* and the instant appeal because the applicant was not convicted under 290(g)(1) of the California Penal Code, which contains the elements of actual knowledge of the registration requirement and willful failure to register. Section 290(a)(1)(A) of the California Penal Code, previously cited, to which the applicant was convicted, does not contain a requirement of knowing or intentional conduct as an element of the offense. As such, based on the language of the statute, cited above, and guidance provided by the Board in *Matter of Tobar-Lobo*, as referenced, the AAO does not concur with the district director that this conviction qualifies as a crime of moral turpitude.

my home, I began to take a liking to him...At first, he paid no attention to me, but as the years went by we began to talk to each other. I told him that I loved him. When my parents found out, they threw [REDACTED] out of the house.

I had very strong feelings for [REDACTED]. My parents were not in favor of my actions due to my young age. I would constantly fight with my parents and tell them that I loved him. My parents did not understand...One day my parents reported this to the police and [REDACTED] was arrested and later convicted [under section 288(a) of the California Penal Code, Lewd Acts With a Child Under 14].

I feel guilty for placing [REDACTED] in this position. Although, we both loved each other, the laws did not allow our relationship. During the time that [REDACTED] was in jail, I always knew that we were going to live together. It was a very difficult time for both of us. It was also very difficult for my parents to accept my feelings. After [REDACTED] release from jail, my parents eventually accepted our relationship. We were married, our children were born, and we all began to live as a family together...

...My husband has committed three crimes. However, he has changed throughout the years. My husband was separated from his parents at age 14. He has always lived alone since that age. This has been very difficult for him...

My husband is a changed individual. His 1992 conviction was a result of our relationship. Our relationship still continues and the birth of our two children continues to change my husband. He has never been in trouble with the authorities since 1992, except for not registering on time with the authorities. My husband realizes his mistakes and has learned from them. He is more responsible now and thinks carefully of any actions that may affect him. He supports us emotionally and financially and has a strong relationship with the children.

We attend Nuevas de Gozo Church in Lennox, California and are active in church. Attending church has also reinforced our moral character...

*Declaration from [REDACTED]*

Counsel also provides documentation to corroborate the applicant's spouse's statements regarding the applicant's rehabilitation. To begin, counsel provides a letter from [REDACTED] M. Div, Nuevas de Gozo Church, confirming that the applicant and his spouse are members "...in good standing and fellowship in our church..." Letter from [REDACTED] M.Div, Nuevas de Gozo Church, dated May 21, 2004. In addition, counsel provides a letter from a fellow member of the applicant's church. As stated by [REDACTED] "...I have known [the applicant] since the year 2000, we met at church; we became members of the same church, and, stayed as good friends. I've known him to be an honest and

reliable person...I am the President of the Men's Ministry...and [redacted] is the Vice-President as well as my right hand. I'd like to add that [redacted] is a great person, husband, and father, has a great personality, is patient, active, and very spiritual, always willing to help our community. I can sure say that these four years that we've known each other have been great, I think highly of him, he has my undivided support and we will continue to get together for family events and stay as good friends..." Letter from [redacted] dated July 8, 2004.

Moreover, a letter is provided by [redacted] President, [redacted] confirming that the applicant has been employed there since June 1999. As [redacted] states, the applicant "...works at...Quizno's...since June of 1999. [redacted] [the applicant] is a chief supervisor of kitchen and maintenance. He is responsible for supervising all functions within kitchen and maintaining all equipments in proper working conditions...understands FDA's HACCP (Hazard Analysis Critical Control Points) food safety and apply the method through out the operation. He also has the knowledge of PHF (Potentially Hazardous Foods) and handles them accordingly to comply with the Health Department's inspection. [redacted] has absolute trust and confidence from [redacted] He is a person with complete hones and holds high integrity for responsibility. As [redacted] operates multiple stores, person such as [redacted] is essential part of the organization to keep the entity running and expanding. We need his service and intend to provide a solid, full-time job for many years to come." Letter from [redacted] President, [redacted], dated May 11, 2004.

Finally, counsel provides copies of certificates issued to the applicant for accomplishments post-1992 conviction, including a diploma for completing a General Automotive Mechanic course and exam as part of the Association Automotive Training Program, issued on June 30, 1999 and a Certification of Appreciation for helping build a new church.

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 spouse and children, all U.S. citizens, would suffer emotional, psychological and financial hardship as a result of their 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 U.S. citizen spouse and children, hardship that the qualifying relatives would face if the applicant were not present in the United States, the applicant’s long-term gainful employment, support letters from friends and family on behalf of the applicant, community ties, certificates of completion and appreciation awarded to the applicant, and the passage of more than 15 years since the violations that lead to convictions for crimes involving moral turpitude. The unfavorable factors in this matter include the applicant’s criminal convictions, his unauthorized presence in the United States and unlawful employment.

The crimes committed by the applicant were 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.