



U.S. Citizenship
and Immigration
Services

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H2

FILE: [REDACTED]

Office: HONOLULU, HI

Date: FEB 11 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:

SELF-REPRESENTED

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 Interim District Director, Honolulu, Hawaii, denied the Form I-601, 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 is a native and citizen of Korea. Pursuant to the record, the applicant was convicted of Violation of the Punishment of Violence etc., Act (Assault) on three separate occasions while in Korea, in 1974, 1975 and 1982.¹ In addition, the applicant was convicted of Special Larceny in 1981.² The applicant was thus deemed to be inadmissible for having committed crimes involving moral turpitude. On June 3, 2003, the applicant filed a Form I-601, Application for Waiver of Ground of Excludability (Form I-601). The applicant sought 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 spouse.

The interim 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 Interim District Director*, dated October 27, 2003.

In support of the appeal, the applicant provides a letter from his U.S. citizen spouse, dated November 20, 2003. 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 -

¹ The applicant was sentenced to 10 months penal servitude with 2 year probation for the 1974 conviction for Assault. The applicant was sentenced to 8 months penal servitude for the 1975 conviction for Assault. The applicant was sentenced to 6 months penal servitude for the 1982 conviction for Assault.

² The applicant was sentenced to 10 months penal servitude for the 1981 conviction for Special Larceny.

- (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 Korea unnecessary, as a waiver of inadmissibility is now available to the applicant under section 212(h)(1)(A) of the Act. The applicant was convicted on three separate occasions for Assault and on one occasion for Larceny. These convictions were for crimes involving moral turpitude which 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 his 1982 conviction for Assault, which indicates rehabilitation.

To further support the applicant's rehabilitation, the applicant's spouse provides two letters. The applicant's spouse states,

...You have stated that my husband [the applicant] has history of criminal records. Since I have known my husband [redacted] maintained good character and supported me financially and emotionally. I believe it is not right to judge a person with few mistakes made...My husband has made several mistakes in Korea while he was in-mature (sic). But, as record shows, he is a totally changed person...

Letter from [redacted] dated November 20, 2003.

The applicant's spouse further states,

...one day, I could not bear these types of abuses no longer and had decided to divorce my ex-husband. I found my sole solace in my religion and the community I found in lord Jesus Christ. After the divorce, I had been afraid to meet other people and spent most of my hours praying God to save me by taking me away from this type of miserable life that I was placed on.

It was then I met my current husband, [REDACTED] [the applicant] whom seemed to have suffered similar abuses in his life, and somehow we fell in love. My husband also suffered failures from past marriage, it may have been the these types of problems that we both had went through, in fact precisely the same situation that is causing so much grief and pain for both of us now. Under my husband's love and care, my emotional and physical state improved to such a degree that I was able to discontinue using sleeping pills to help me fall a sleep and I was no longer afraid to meet other people...

In addition I now often miss my work...If in fact I do lose the job, then I would have to rely on my husband, [REDACTED] for all my financial needs...

Letter from [REDACTED] dated June 3, 2003.

[REDACTED] states the following regarding the applicant,

...It is my understanding that [REDACTED] [the applicant] had run into some legal problems in Korea at his younger age. However, it is also my understanding that Mr. [REDACTED] has reformed and living as a model citizen as a loving husband and father of two children. Both [REDACTED] and his wife love each other so dearly and they are now living as a devoted Christian and a faithful members of Bhansok Korean Baptist Church...

Letter from [REDACTED], undated.

The applicant also provides documentation to corroborate the applicant's spouse's statements regarding the applicant's rehabilitation. As stated by [REDACTED] Bhansok Korean Baptist Church " I verify that [REDACTED] and [REDACTED] ran are currently residing at [REDACTED] Honolulu, HI 96826 as a married couple who dearly love each other, and also certify that both [REDACTED] and [REDACTED] are faithful members of Bhansok Korea Baptist Church." *Letter and translation from [REDACTED] Bhansok Korean Baptist Church, dated June 3, 2003.*

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, a U.S. citizen, would suffer emotional, psychological and financial 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 U.S. citizen spouse, the hardship that the qualifying relative would face if the applicant were not present in the United States, the applicant's long-term gainful employment, payment of taxes, support letters from friends and family on behalf of the applicant, community ties, and the passage of more than 25 years since the violations that lead to conviction. 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.