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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: **JAN 15 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:

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 waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant 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)(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 (burglary, aggravated battery, aggravated assault and resisting an officer with violence to his person). The applicant seeks a waiver of inadmissibility in order to reside with his family in the United States.

The director found that the applicant had 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. *Director's Decision*, dated April 14, 2006.

On appeal, the applicant's spouse states that the applicant is the sole supporter of their family and she will suffer greatly if he is not granted status. *Form I-290B*, received, May 1, 2006.

The record includes, but is not limited to, the applicant's adjustment of status application and his criminal record. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on March 23, 1992, the applicant was convicted of burglary, aggravated battery, aggravated assault and resisting an officer with violence to his person.

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

(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 [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 . . .

The record reflects that the date on which the activity resulting in the applicant's convictions occurred is May 19, 1991. The AAO notes that an application for admission or adjustment is a "continuing" application, adjudicated based on the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). As a final decision has not been made on the I-601 application, the adjustment of status application is still considered pending. As such, the date of application for adjustment of status has technically not taken place yet. Therefore, section 212(h)(1)(A) of the Act applies to the applicant as the crimes involving moral turpitude for which the applicant was found inadmissible occurred more than 15 years prior to the applicant's adjustment of status application.¹

In order to be eligible for a section 212(h)(1)(A) waiver, the applicant must demonstrate that his admission to the United States would not be contrary to its national welfare, safety, or security and that he is rehabilitated. The record indicates that the applicant is employed as an electrician. *Applicant's Form G-325A, Biographic Information*, dated February 6, 2003. The applicant's spouse states that the applicant is the sole supporter of their family. *Form I-290B*. There is no indication that the applicant has ever relied on the government for financial assistance. The record reflects that the applicant was sentenced to 364 days in jail and two years probation. *Applicant's Order of Probation*, at 1, 3, dated March 23, 1992. There is no indication that the applicant violated his probation. The record reflects that the applicant was arrested for simple battery and assault on March 14, 1997, but these charges were dismissed. *Applicant's Miami-Dade County Criminal Record*, dated May 5, 2004. There is no indication that the applicant is involved with terrorist-related activities. Therefore, the record evidences that admitting the applicant to the United States would not be contrary to its national welfare, safety, or security.

However, the record does not include sufficient evidence that the applicant has been rehabilitated, especially in light of the violent nature of his offenses. The record does not include a statement of remorse, letters from community leaders detailing the applicant's rehabilitation and/or other evidence which reflects rehabilitation.

¹ The AAO notes that the applicant has a U.S. citizen daughter and is eligible to file a waiver under section 212(h)(1)(B) of the Act based on extreme hardship to his daughter. However, with the exception of brief statements from the applicant and his spouse, there is no evidence that the applicant's daughter would experience extreme hardship if she relocated to Cuba or remained in the United States. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As such, the applicant has not established eligibility for a waiver under section 212(h)(1)(B) of the Act.

The AAO notes that a review of the documentation in the record fails to establish that the applicant has been rehabilitated. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion. The applicant would be required to establish that his favorable factors outweigh his adverse factors in order for him to receive a favorable exercise of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.