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U.S. Citizenship  
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FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

JUL 10 2008

IN RE: Applicant:

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director, California Service Center. 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 Cuba. Pursuant to the record, the applicant was convicted of Grand Theft in the Third Degree, a violation of section 812.014 of the Florida Code, and Extortion, a violation of section 836.05 of the Florida Code, based on a May 1992 arrest. In addition, the applicant was convicted of Petit Larceny/Theft, a violation of section 812.014 of the Florida Code, based on a 1985 arrest. The applicant was thus deemed to be inadmissible for having committed crimes involving moral turpitude. In March 2006, the applicant filed a Form I-601, Application for Waiver of Ground of Inadmissibility (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 her U.S. citizen and lawful permanent resident daughters.

The 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 Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated April 26, 2006.

In support of the appeal, the applicant provides a letter from her U.S. citizen daughter, [REDACTED] dated May 22, 2006; evidence of the applicant's U.S. citizen daughter's, [REDACTED] pregnancy; U.S. birth certificates for the applicant's grand-children; and a medical letter with respect to the applicant's mental health. 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.

The AAO finds the analysis as to whether the applicant's qualifying relatives would suffer extreme hardship if the applicant were removed to Cuba unnecessary, as a waiver of inadmissibility is now available to the applicant under section 212(h)(1)(A) of the Act. The above-referenced 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 1992, which indicates rehabilitation.

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

...My mother [the applicant] came to this country over 26 years ago and she has raised all three of us since childhood. This includes myself and both sisters of mine. My mother has...always helped us and maintained an excellent mother daughter relationship. She has always helped me with raising my daughters and at this moment I am expecting another children and she is taking care of my children while I attend my pregnancy. If my mother was not allowed to remain in this country it would create extreme hardship on herself and our family including the grandchildren. She admits that she made a mistake with the law years ago but she regrets these matters....

Letter from [redacted], dated March 25, 2006.

The applicant's middle daughter, also a U.S. citizen, states as follows:

...All of us are devastated and hurt to know that the country where we have lived all our lives and have been raised to love and honor is trying to strip us of the only parent we know and love and whom has taught us to fight for what we believe in...My sister's and I fear for our mother's life if she were to be taken from us, her grandchildren and all she knows, to be placed in a communist country where she has no family and would be left alone...We could not imagine our lives without her and she would not withstand hers without her daughters and grandchildren. With the most sincere apologies for our mother's wrong past actions we ask you to reevaluate and reconsider her case....

Letter from [REDACTED] dated May 22, 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 daughters, two who are U.S. citizens and one who is a lawful permanent resident, would suffer emotional and psychological 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 and lawful permanent resident daughters, the applicant's U.S. citizen grand-children, the hardships that the qualifying relatives would face if the

applicant were not present in the United States, in light of the applicant's mental health situation, her long-term disability and the need for her family's continued assistance<sup>1</sup>, the applicant's long-term care of her daughters and grandchildren, support letters from family on behalf of the applicant, community ties, and the passage of more than 15 years since the violations that lead to conviction. The unfavorable factor in this matter is the applicant's criminal convictions.

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 her 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.

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<sup>1</sup> The record indicates that the applicant suffers from a psychiatric illness, namely, Schizoaffective Disorder Mixed, and has been disabled since 1984. She has been hospitalized on several occasions and has a history of non-compliance with treatment. See Letter from [REDACTED] M.D., dated March 14, 2006.