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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED] Office: LOS ANGELES, CALIFORNIA

Date: JUN 17 2008

IN RE: [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)

ON BEHALF OF PETITIONER:

[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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of El Salvador who was found to be 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 a crime involving moral turpitude (Grand Theft, Burglary, and Receiving Stolen Property). The applicant is the husband of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative. The applicant seeks 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 wife and children.

The district director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Decision of the District Director* dated November 9, 2005.

On appeal, counsel asserts that the applicant's wife, daughter, and stepson, all U.S. Citizens, would suffer extreme hardship if the applicant were removed from the United States. Specifically, counsel states that the applicant has provided emotional support and economic stability to his wife, to whom he has been married since 1991. He supported her financially as she attended school and has served as a father-figure to his stepson, who was only one year old when the applicant met his wife. Counsel further states that the applicant is very close to his daughter, and she and the applicant's stepson, both U.S. Citizens, would not follow the applicant if he were removed to El Salvador and would suffer hardship as a result of the separation. Counsel further states that the applicant merits the relief requested as an exercise of discretion.

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

- (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) states in pertinent part:

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-

(1)(A) [I]t is established to the satisfaction of the Attorney General that-

- (i) [T]he 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 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 applicant was convicted of second degree burglary on June 22, 1992, carrying a loaded firearm on July 23, 1992, and receiving stolen property on February 16, 1993. It appears the applicant was also arrested on September 30, 1991 for grand theft and was later convicted on this charge, but there is no court disposition on the record. The convictions for burglary, grand theft, and receiving stolen property render the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The AAO notes that the applicant was last convicted of a crime involving moral turpitude on February 16, 1993 for conduct that occurred on or before his arrest on January 14, 1993, more than 15 years prior to the applicant's application for admission. Since more than 15 years have passed since the criminal activity for which he was convicted, the applicant is now statutorily eligible for a waiver pursuant to section 212(h)(1)(A) of the Act.

The record reflects that the applicant is a thirty-four year-old native and citizen of El Salvador who has resided in the United States since entering without inspection in 1984, when he was ten years old. The applicant was included as a dependent on his mother's asylum application, but became ineligible for derivative status when he was married on October 11, 1991. The applicant's wife is a thirty-eight year-old native of El Salvador and citizen of the United States. She naturalized on November 15, 1996 and filed a Petition for Alien Relative for the applicant on April 7, 1997.

The applicant committed various criminal offenses from 1991 to 1993, and he was last arrested on January 14, 1993, when he was nineteen years old. None of the offenses he committed was a crime of violence, and the record does not establish that the admission of the applicant to the United States would be "contrary to the national welfare, safety, or security of the United States." Further, the record establishes that the applicant has rehabilitated. He has not been arrested or charged with a crime in over fifteen years and records indicate that he has been employed in the United States and has filed income tax returns. *See U.S. Individual Income Tax Returns filed jointly with the applicant's spouse for tax years 2000 to 2002, submitted with affidavit of support.*

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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 section 212(h)(1)(B) 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 "balance 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 adverse factors in the present case are the applicant's convictions for burglary, grand theft, receipt of stolen property, and carrying a loaded firearm. As noted above, more than fifteen years has passed since the applicant's most recent arrest and conviction. The AAO further notes that although the applicant entered the United States without inspection, he was only ten years old at the time. He remained lawfully present in the United States as a dependent on his mother's asylum application, and aside from a period of unlawful presence before he filed his application for adjustment of status on February 10, 1999, he has not otherwise violated the immigration laws.

The favorable factors in the present case are the applicant's length of residence and family ties in the United States, including a U.S. Citizen wife to whom he has been married since 1991, a U.S. Citizen daughter and stepson, and a Lawful Permanent Resident mother and sister. *See birth certificates for [REDACTED] and [REDACTED] and permanent resident cards for [REDACTED] and [REDACTED]*

The applicant's wife states the applicant is a wonderful husband who "has always been very supportive of her desire to attend school" and supported her and her son while she attended Los Angeles City College. *See letter from [REDACTED] dated January 12, 2004.* She further states that he is a great father to her son, who was only one year old when she met the applicant, and that "their lives would be shattered without the presence" of the applicant. *Id.* The applicant has also been employed and filed income tax returns in the United States, and a letter from his employer states he is "an exceptional employee who demonstrates tremendous dedication and reliability as well as excellent job skills." The applicant's employer further states, "I look forward to working with [REDACTED] for many years to come." *See letter from [REDACTED] dated December 12, 2003.*

The AAO finds that the crimes committed by the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. 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.