

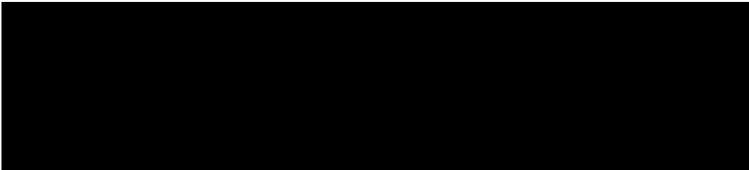
Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

Hq

PUBLIC COPY



FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

MAR 03 2008

IN RE: Applicant:



APPLICATION: Application for Waiver of Inadmissibility Pursuant to Section 212(h) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(h).

ON BEHALF OF PETITIONER:



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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a 37-year-old native and citizen of Mexico. On November 5, 1992, the applicant pled guilty to the crime of Intimidation of a Witness in the Third Degree, a Class E Felony under New York law, and was imprisoned from October 15, 1991 to December 2, 1992. He was found to be inadmissible to the United States under section 212(a)(2)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i) as an alien convicted of a crime involving moral turpitude. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and presently seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may adjust his status to lawful permanent resident of the United States.

The director concluded that the applicant had not established that his inadmissibility would result in extreme hardship to his U.S. citizen spouse or lawful permanent resident children. *See* Decision of the Director, dated February 9, 2006.

On appeal, the applicant contends that the denial of his application for a waiver of inadmissibility “was made in error.” *See* Form I-290B, Notice of Appeal, filed March 8, 2006. The applicant, through counsel, indicated that he will be submitting a brief and/or evidence to the AAO within 30 days. Although the record contains the applicant’s Motion for Reconsideration, and supporting evidence, dated April 6, 2006, there is no appellate brief and/or supporting evidence in the record. On January 23, 2008, the AAO requested that counsel provide the appellate brief or evidence within 5 days, if such had been timely filed. On January 30, 2008, the AAO received a response from counsel explaining that the brief was “inadvertently filed to the USCIS California Service Center as a Motion to Reconsider.”

Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), states, in pertinent part:

- (i) Except as provided in clause (ii), any 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 . . . is inadmissible.

Section 212(h) of the Act, 8 U.S.C. § 1182(h), provides, in pertinent part:

The [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 [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 before the AAO contains a court certified criminal disposition indicating that the applicant pled guilty to Intimidation of a Witness in the Third Degree based on activities that occurred on or about October 13, 1991. The applicant was imprisoned from October 15, 1991 to December 2, 1992. Intimidation of a Witness in the Third Degree, a Class E Felony under New York law, is a crime involving moral turpitude. *See e.g. Knowtze v. United States Dept. of State*, 634 F.2d 207 (5th Cir. 1981)(finding that attempting to obstruct or impede the progress of justice is a crime involving moral turpitude). The AAO thus finds that the director was correct in finding that the applicant was inadmissible as charged under section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A). The question remains whether the applicant is eligible for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h).

More than fifteen years has elapsed since 1991, when the applicant committed the crime for which he was convicted. As such, the applicant appears eligible for a waiver of inadmissibility under section 212(h)(1)(A) of the Act, 8 U.S.C. § 1182(h)(1)(A).¹

A waiver of inadmissibility under section 212(h)(1)(A) may be granted upon a determination that the applicant's admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and that the applicant has been rehabilitated. The record in this case indicates that, other than the activities in 1991, the applicant has not committed any crimes. He is actively involved in his community and respected by his friends and peers. He has been married to a U.S. citizen since 2000, and together they provide financial and emotional support to his children and grandchild. The AAO is persuaded, based on the evidence in the record, that the applicant's admission would not be contrary to the national welfare, safety, or security of the United States, and that he has been rehabilitated. The AAO therefore finds that the applicant merits the grant of a waiver of inadmissibility under section 212(h)(1)(A) of the Act. Because the AAO finds that the applicant is eligible for a waiver under section 212(h)(1)(A) of the Act, the AAO need not address the applicant's eligibility under section 212(h)(1)(B) of the Act or the director's findings with respect to the applicant's claims of extreme hardship.

¹ The AAO notes that the director's decision was dated in February 2006, before the applicant became eligible for consideration under section 212(h)(1)(A), 8 U.S.C. § 1182(h)(1)(A).

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.