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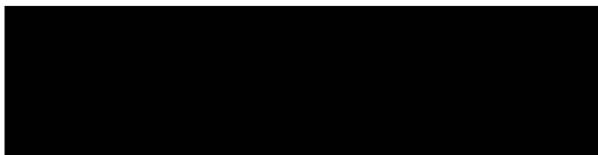
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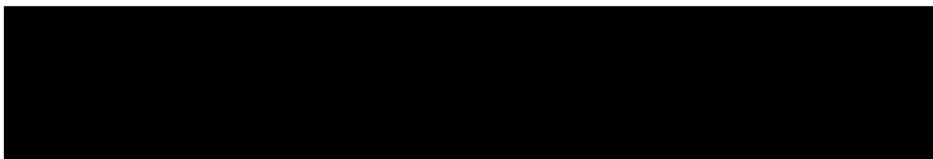
IN RE: Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(h)
of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:



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 District Director, Detroit, Michigan, denied the 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, a native and citizen of Canada, was found 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 crimes involving moral turpitude. The applicant sought 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 U.S. citizen spouse.

The district director referenced that no evidence of extreme hardship had been submitted, concluded that the positive factors present in the record did not warrant favorable use of discretion, and denied the Form I-601 accordingly. *Decision of the District Director*, dated August 4, 2006.¹

In support of the appeal, counsel submitted a legal brief, dated August 31, 2006; a redacted decision issued by the AAO relating to an inadmissibility waiver; and medical records with respect to the applicant's spouse and mother-in-law. 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.

¹ The AAO notes that section 212(h) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, the CIS must then assess whether to exercise discretion.

A review of the district director's decision, dated August 4, 2006, reflects that, although the district director stated that the denial decision issued in the applicant's case was in response to a Form I-601, Application for Waiver of Ground of Excludability, the district director's decision failed to conduct an extreme hardship analysis of the applicant's claim. Instead, the analysis contained in the decision consists of a discretionary balancing of the favorable and unfavorable factors in the applicant's case and a blanket statement from the district director referencing that evidence regarding hardship had not been provided by the applicant. As noted above, in an I-601, Application for Waiver of Ground of Excludability case, the district director is required to conduct a clear extreme hardship analysis prior to conducting an analysis regarding the exercise of discretion. Moreover, the discretionary balancing of positive and negative factors analysis is only conducted once the district director finds that the applicant established extreme hardship to the applicant's qualifying relative.

The district director erred in not conducting a complete extreme hardship analysis of this evidence. The AAO would normally have remanded the present appeal to the district director for a proper extreme hardship analysis in the applicant's case. The AAO finds, however, that in the present case, the issue regarding whether the applicant has established extreme hardship to his spouse is unnecessary, as is further discussed in detail below.

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.

Regarding the applicant’s grounds of inadmissibility, the record reflects the commission of multiple crimes involving moral turpitude. The applicant was convicted, in 1977, of Uttering Counterfeit Money under the Canadian Criminal Code. In 1988, the applicant was convicted of Sexual Assault under the Canadian Criminal Code. In addition, in 1989, the applicant was convicted of Mischief over \$1000.² The District

² The record indicates that the applicant was also convicted in 1990 of Failure to Comply with a Probation Order under the Canadian Criminal Code. The record is unclear as to whether this conviction is a crime of moral turpitude. Nevertheless, as the AAO has concluded that the above-referenced convictions are crimes of moral turpitude, a waiver of inadmissibility for the applicant remains a requisite, and moreover, since the conviction for Failure to Comply with a Probation Order occurred in 1990, the applicant remains eligible for a waiver under 212(h)(1)(A) of the Act, as further discussed below.

Director found the applicant inadmissible based upon the applicant's commission of the above-referenced crimes involving moral turpitude. As the crimes were committed after the applicant's eighteenth birthday, the district director correctly found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.³

The AAO finds the analysis as to whether the applicant's qualifying relatives would suffer extreme hardship if the applicant were removed to Canada unnecessary, as a waiver of inadmissibility is now available to the applicant under section 212(h)(1)(A) of the Act. The crimes involving moral turpitude for which the applicant was found inadmissible, as outlined above, 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 involving moral turpitude since 1990, which indicates rehabilitation.

To further support the applicant's rehabilitation, the applicant's spouse provides a declaration. In said declaration, the applicant's spouse states:

... We are well established in the community with his [the applicant's] business, we own a home, his work van plus a car. We even are paying for pre-funeral arrangements so none of our children will have to worry about any of this. We are in the process of changing our will and including all of our children and grandchildren.

In addition, the AAO notes that the applicant was convicted, in 1978 and 1996, of Driving with More than 80 Mgs of Alcohol, in 1987 of Driving While Ability Impaired, and in 1994, for Obstructing a Peace Officer. The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992):

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general.

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required *mens rea* may not be determined from the statute, moral turpitude does not inhere.

Based on the statutory language provided in the record, it does not appear that these convictions were for crimes involving moral turpitude, as knowing or intentional conduct was not a prerequisite for conviction.

³ Counsel for the applicant asserts that the applicant did not serve any prison time for the crimes to which he was convicted. *Brief in Support of Appeal*, dated August 31, 2006. The record does not clearly support this assertion, in light of the fact that the applicant's previous counsel listed a number of short-term imprisonment terms, ranging from a few days to six months, with respect to certain convictions. *Letter from [REDACTED]* dated February 17, 2005. Irrespective of this inconsistency in the record, the aggregate sentences to confinement did not exceed five years and thus, the applicant is eligible for a waiver of inadmissibility.

I met [redacted] [the applicant] in 2000.. [redacted] is the best thing that could have happened to me after being single mom for 12 years. My family and friends just love [redacted] and we are good together. At one time I worked doubles at work plus another job at another nursing home to keep my family together. When [redacted] came along we started working together and starting a business of our own.... I became ill with complications of Diabetes and heart problems and told [redacted] I didn't want to be a burden to him so maybe we should just not get married. He said he would always take care of me and medically he would be there. Believe me I was in the hospital 6 times since Sept. 2004 and [redacted] was there trying to work take care of me and my mom who had fallen at home and was now using a walker and cane. He cooked, cleaned, and basically ran the house for both of us plus my mom who is 87 years old.

Mom continues to live with us and is very satisfied and happy she is not in a nursing home. [redacted] and my mother get along very well and he always jokes with her and vice versa.

In Dec. 2003 I became completely disabled and now depend on [redacted] for financial, physical and mental support...

Letter from [redacted] dated August 30, 2005.

The applicant himself confirms that he has been rehabilitated:

...The last time I had a drink was when I was in Quebec at a family friends house back in approx 1999. When I came back into the U.S. I was introduced to my present wife [redacted] thru a mutual friend. I became involved with [redacted] and we talked about many things one was drinking and because her father was an alcoholic and abused her and her siblings I made a promise to her I would not drink. I have kept that promise to this day. [redacted] does not drink or have any such alcohol in the house. At the time of my drinking I was young and had no one who really cared or who I cared about. I am totally in love with my wife, I have a good life now and respect her and she trusts and respects me. I am asking that you take in and consider my life and future with [redacted]

Letter from [redacted] dated August 30, 2005.

Counsel also provides numerous letters from family members and friends to corroborate the applicant's spouse's statements regarding the applicant's rehabilitation. [redacted] states the following:

...As of this time, I have been a member of this family, the [redacted], for over 8 years, and I have met [redacted] [the applicant] on a number of occasions....

During the time I have known [REDACTED] I have been able to observe to what extent this man is a person who has a sense of responsibilities, and how he attributes a great importance to his family. Time and again he has shown his love for work. He is an assiduous worker who values work well done very highly.

He is an extremely hard working and generous man. Ever since I met him, [REDACTED] demonstrated to me a remarkable degree of abstinence, in all senses of the word. He does not consume any drugs or alcoholic beverages....

I acknowledge without hesitation that [REDACTED] is a very pleasant person on whom one can rely....

Letter and translation from [REDACTED]

The applicant's mother-in-law echoes the sentiments outlined above:

...I am 87 years old and the mother-in-law of [REDACTED] [the applicant]. I have lived in the household of he and my daughter [REDACTED] [REDACTED] has treated me very good and has been a blessing at times when my daughter has been in the hospital. Getting meals and helping me get around. He is a very good worker. He does not drink or become violent. He has been outstanding as a son-in-law.

Letter from [REDACTED], dated August 17, 2005.

The applicant's neighbor states,

[REDACTED] [the applicant] is my next-door neighbor. I have known him for four years. I am a single mom and [REDACTED] is always ready to lend a helping hand if I need him to come over for something. He is a hard worker. I see him fixing his house up and letting his mother-in-law stay there. [REDACTED] and [REDACTED] are both friendly and kind people....

Letter from [REDACTED] dated August 23, 2005.

Counsel also provides letters from the applicant's business associates. As Mr. and Mrs. [REDACTED] attest:

...I worked with contractors for almost 30 years and I must say that I wish other construction workers were as reliable a craftsman as he [the applicant] is. We had him do our entire home with tile and carpeting. He went beyond what was expected. We found him to have the highest integrity and have recommended

him to others. Without a doubt he would, in our mind be a tremendous asset to the building trades and an excellent citizen....

Letter from Mr. and Mrs. [REDACTED] dated August 18, 2005.

[REDACTED] further states:

[REDACTED] [the applicant] has been a sub-contractor for [REDACTED] for more than four years. [REDACTED] is a flooring mechanic that specializes in doing wood, ceramic, and vinyl sheet goods.

[REDACTED] is a true professional with superior talent. He has been very busy in a soft market, because his workmanship is extraordinary. We do a lot of work in the area of new home construction. The builders that have been exposed to Alain's ability constantly demand that he do their work....

[REDACTED] is a genuinely kind and wonderful person. He is an exemplary husband, father, and grandfather. I know him best obviously as a business associate. He is always on time, communicates well with customers and gets the job done. I wish all the mechanics that do work for us performed as well as Alain....

Letter from [REDACTED], President, [REDACTED] dated August 20, 2005.

One of the applicant's employees states the following:

...I have been employed by [REDACTED] [the applicant]...for two years now. [REDACTED] has been a fair and honest employer. He has taught me, and continues to teach me the flooring business on a daily basis. I enjoy working with [REDACTED] and his wife [REDACTED]. Working for [REDACTED] has been a great step for me towards a trade that I can stay with and continue my education so that one day I may have my own flooring company.

Letter from [REDACTED]

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-Moralez, 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, hardship that the qualifying relative and her mother would face if the applicant were not present in the United States, the applicant's long-term gainful employment, support letters from friends, family members and business associates, community ties, payment of taxes, ownership of property, and the passage of more than 17 years since the violations that lead to convictions for crimes involving moral turpitude. 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.