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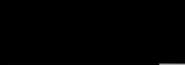
U.S. Citizenship  
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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

OCT 10 2008

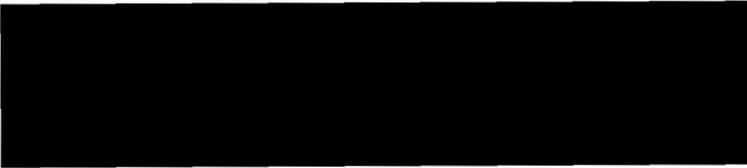
IN RE: Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(h)  
of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)(1)

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.

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. 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 pled guilty to the charge of Grand Theft in the Third Degree, a violation of section 812.014 of the Florida Code, based on a 1988 incident and subsequent arrest. The adjudication was withheld; the applicant was placed on probation and ordered to pay restitution. The applicant is thus deemed to be inadmissible for having committed a crime involving moral turpitude. In March 2006, the applicant filed a Form I-601, Application for Waiver of Grounds 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 his U.S. citizen spouse and U.S. citizen children born in 1995 and 1998.

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 19, 2006.

In support of the appeal, counsel for the applicant submits a brief, dated May 16, 2006, with referenced exhibits. 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:

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 available to the applicant under section 212(h)(1)(A) of the Act. The above-referenced crime involving moral turpitude 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 the above-referenced incident in 1988, which indicates rehabilitation.

To further support the applicant's rehabilitation, the applicant's spouse provides a letter. The applicant's spouse states,

[redacted] [the applicant] and I have been married since October of 1996, we met in January 1994. We have two children, our daughter who is 10 years old and our son who is 7. Together we have been building our lives to improve the future for our children. I was born in the United States, as were both of our children.

I met [redacted] a year and a half after I had a horrific accident in July of 1992. I was a pedestrian struck by a drunk driver. I was in a coma for a few weeks and had many injuries. I had to have blood given to me; my spleen was removed, and I suffered traumatic head injuries. I have been disabled since then. I still like [sic] with the psychological trauma of everything that has happened to me. I have had physical and psychological breakdowns. I have been admitted to the hospital for suicidal thoughts. Had it not been for the support and care of my husband, I would not have found the strength to move forward....

I am not able to take care of our home and our children on my own. I require [redacted] s help. He helps me get the children ready for school every morning and put them to bed every night. Together

we help the children with homework and we share responsibility for the household chores. Because I am not able to work full-time, [REDACTED] provides all of the financial support for the family....

[REDACTED] is a good father and a hard working man. He has been at the same job for many years, which gives our family medical insurance and other benefits. We pay our taxes every year. [REDACTED] gives us a home and stability in our lives....

Letter from [REDACTED] dated May 12, 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 U.S. citizen spouse and young children would suffer physical, financial, 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 spouse and 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 spouse's long-term disability, her diagnosis of depression and bipolar disorder and her need for her spouse's continued financial support and assistance, the applicant's long-term care of his children, support letters from family on behalf of the applicant, community ties, the payment of taxes, gainful employment since January 1997, and the passage of more than 20 years since the violation that led to conviction of a crime involving moral turpitude. The unfavorable factor in this matter is the applicant's criminal conviction.

The crime committed by the applicant was 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.