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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, Mass, 3/F
Washington, D.C. 20536

[Redacted]

FILE# [Redacted]

Office: Miami

Date: APR 29 2003

IN RE: Applicant: [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 APPLICANT: [Redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Finland who was found to be inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(I) and 212(a)(2)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(2)(A)(i)(I) and 1182(a)(2)(B), for having been convicted of a crime involving moral turpitude and for having been convicted of multiple crimes. The applicant was granted a nonimmigrant waiver of inadmissibility under section 212(d)(3)(A) of the Act, 8 U.S.C. 1182(d)(3)(A). The applicant was last admitted to the United States on October 18, 1995, as a nonimmigrant visitor, and he remained longer than authorized. The applicant is the beneficiary of an approved petition for alien relative as the unmarried son of a United States citizen. He seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h).

The district director concluded that the applicant had failed to establish that he had been rehabilitated or that his United States citizen mother would suffer extreme hardship if he were removed from the United States. His application was denied accordingly.

On appeal, counsel states that the applicant's mother is 76 years old and a widow whose medical condition is very serious. Counsel states that she relies on the applicant for daily support in order to manage her daily activities, including administering medicine and transporting her because she does not drive a vehicle.

The record reflects the following:

(1) In 1966, the applicant was convicted as a juvenile in Finland of battery and providing false identification to a policeman. He was additionally convicted of lewdness with a 15-year-old and grand larceny. He was sentenced to 9 months hard labor for these crimes;

(2) In 1967, the applicant was convicted in Finland of the combined offenses of taking and driving an automobile without permission while intoxicated on two occasions, outrageous reckless driving without a license, reckless disregard of police commands to stop, and fleeing the scene of a traffic accident. He received a combined sentence of 1 year and 6 months hard labor for these crimes;

(3) In 1976, the applicant was convicted in Finland of theft as a recidivist. He was sentenced to 2 months imprisonment;

(4) In May 1985, the applicant was convicted in Finland of the combined offenses of theft as a recidivist, preparation of 14 forged documents (checks) and presenting false identification documents to the police. He was sentenced to 9 months imprisonment for these crimes;

(5) In December 1993, the applicant was found guilty, in absentia, for driving while under the influence of alcohol in violation of Florida Statute section 316.193. He received a 5 day suspended sentence. It is noted that the record reflects that the applicant was involved in a traffic accident relating to this offense;

(6) In September 2000, the applicant was arrested and charged with being in physical control of a vehicle while under the influence of alcohol.¹

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

(A)(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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

(B) Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

It is noted that the District Director Decision, dated December 27, 2000, indicates that the applicant was convicted on March 24, 1995 for applying for a driver's license in a false name, however, no evidence of this conviction was found in the record.

(h) The Attorney General 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 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 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, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status

A review of the record reflects that the district director erroneously found the applicant to be inadmissible pursuant to section 212(a)(2)(B) of the Act. As indicated above, in order to be inadmissible under section 212(a)(2)(B) of the Act, the alien must have received an aggregate sentence to confinement of 5 or more years. In the applicant's case, the aggregate sentence to confinement is less than 5 years. The applicant was, however, correctly found to be inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, and he is eligible to apply for a waiver of inadmissibility pursuant to sections 212(h)(1)(A) and

212(h)(1)(B). The district director's error is therefore harmless.

In *Matter of Torres-Varella*, 23 I&N Dec. 78 (BIA 2001), the Board of Immigration Appeals (BIA) held that a driving under the influence (DUI) conviction is not a crime involving moral turpitude unless the alien is convicted under a state statute that requires a culpable mental state. The DUI statute under which the applicant was convicted in 1993 contains no mental state or culpability provisions. See *Florida Statute* § 316.193. The statute is therefore a simple DUI statute and not a crime involving moral turpitude.

The record reflects that the applicant was interviewed by the Bureau of Citizen and Immigration Services (formerly the Immigration and Naturalization Service) regarding the adjustment of his status to that of a lawful permanent resident on December 8, 2000. Because the applicant's DUI conviction is not considered a crime involving moral turpitude, more than 15 years have elapsed since the applicant committed his last inadmissible act in 1985. The applicant is thus eligible for the waiver provided for in section 212(h)(1)(A) of the Act if his admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and he has been rehabilitated. See *section 212(h)(1)(A) of the Act, supra*.

The record reflects that the applicant was arrested for being in control of a vehicle while under the influence of alcohol in September 2000. The applicant was additionally involved in a traffic accident in which he was found guilty of driving under the influence alcohol in December 1993. The combined evidence in the record demonstrates a continuous pattern of reckless disregard for the law. Moreover, on appeal, counsel mentions only that the applicant's U.S. citizen mother would suffer extreme hardship if the applicant were removed from the United States. Counsel did not address the rehabilitation issue, and submitted no evidence or information, whatsoever, to establish that the applicant has been rehabilitated. Based on the evidence in the record, this office finds that the applicant has not established that he has been reformed or rehabilitated or that he warrants a favorable exercise of discretion under section 212(h)(1)(A) of the Act.

Counsel additionally failed to establish that the applicant's mother would suffer extreme hardship if the applicant were removed from the U.S. In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 568-69 (BIA 1999), the Board of Immigration Appeals provided a list of factors it deemed relevant in determining whether an alien had established extreme hardship pursuant to section 212(i) of the Act. The factors included the presence of a lawful permanent

resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. See *Cervantes-Gonzalez* at 565-566.

In the Notice of Appeal counsel states that:

Mrs. [REDACTED] [the applicant's mother] is a 76 [year] old widower, whose medical condition is very serious. She is relying on her son, [REDACTED] for daily support in order to manage her daily activities. For example, Mrs. [REDACTED] cannot administer her own medication and is unable to drive a vehicle or otherwise get around without assistance living in an area which offers very poor public transportation.

Counsel submitted no additional information and the record contains no affidavits or statements by the applicant or his mother regarding the hardship she would suffer. The record additionally contains no medical evidence to support the contention that the applicant's mother suffers from a serious condition, and there is no evidence that she is reliant on the applicant in any way.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of proving eligibility remains entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden.

Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.