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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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H4

FILE:



Office: LOS ANGELES, CALIFORNIA

Date: JUL 06 2005

IN RE:

Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under § 212(a)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(2)(A).

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained, and the previous decision of the interim district director will be withdrawn. The waiver will be approved.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to § 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), as an alien convicted of a crime involving moral turpitude. The applicant is married to a United States citizen and is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility pursuant to § 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside with his spouse in the United States.

The interim district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative. The application was denied accordingly. On appeal, counsel asserts that the applicant's wife would suffer extreme hardship if the waiver application were denied, because she is totally disabled and requires the applicant's assistance to carry out her daily activities. Counsel submits a statement from the applicant's wife as well as letters from three doctors stating that she is disabled and relies on the applicant.

8 C.F.R. § 103.5 states in pertinent part:

- (2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence.

....

- (4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed.

Section 212(h) states in pertinent part that:

- (h) 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 voluntary manslaughter and assault with a deadly weapon, in violation of California Penal Code §§ 192.1 and 245(A), on May 16, 1974. The crimes were committed the previous year. Given that the applicant committed the crimes over fifteen years prior to the adjudication of his adjustment of status application, he is eligible for a waiver pursuant to § 212(h)(1)(A) of the Act.

The record reflects that the applicant has not been charged with any additional crimes since his conviction in 1974. It does not appear that the admission of the applicant to the United States would be “contrary to the national welfare, safety, or security of the United States.” In addition, there is evidence on the record that the applicant has lived in the United States since 1967, has been continuously employed while in this country, and that he has formed connections, such as membership in a local parish, with his community. The record thus indicates that the applicant has been rehabilitated. The evidence establishes that the applicant meets the requirements for waiver of his grounds of inadmissibility under § 212(h)(1)(A) of the Act.

The AAO notes that the applicant’s spouse would suffer extreme hardship if the applicant were removed. According to the three doctors’ letters submitted on appeal, two dated in 2003 and one in 1993, the applicant’s wife suffers from end-stage renal disease, arthritis, diabetes, hypertension, obesity, and sleep apnea. She cannot see well and must undergo hemodialysis three times per week. The applicant assists her in bathing, grooming, and dressing, prepares her meals, and takes her to her medical appointments. The applicant’s wife is unable to work or to live alone, and she depends on the applicant for all her needs. It does not appear that the applicant’s wife could be expected to relocate to Mexico, given her serious, chronic diseases.

Thus, the discretionary factors in the applicant’s favor are the following: he has lived in the United States for 38 years, he has maintained employment while in the United States; he has not been charged with any crime in over thirty years; he has positive ties with his community; and his wife would suffer extreme hardship if he were removed. The only unfavorable factor presented in the application is the applicant’s conviction for voluntary manslaughter and assault with a deadly weapon in 1974. The AAO recognizes the serious nature of these crimes and accords them due weight in analyzing the discretionary factors present. However, the applicant has established that the favorable factors in his application outweigh the unfavorable factor.

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 now met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the application is approved.