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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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MAR 08 2005

[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES, CALIFORNIA

Date:

IN RE:

[Redacted]

APPLICATION:

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

ON BEHALF OF APPLICANT:

[Redacted]

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 District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of Nicaragua who entered the United States without inspection or admission in June of 1983. The record indicates that the applicant originally entered the United States in 1973 pursuant to an immigrant visa. However, he was found to be excludable at that time, and his application to waive excludability was denied. He was granted voluntary departure and left within the allowed departure period. The applicant is married to a naturalized U.S. citizen and is the beneficiary of an approved petition for alien relative. He filed an application to adjust status to that of permanent resident in on July 23, 1996. The applicant 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), for having been convicted in 1987 of crimes involving moral turpitude (two counts of committing lewd acts upon a child under the age of 14). The applicant seeks a waiver of inadmissibility in order to reside with his wife and children in the United States.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse and children. The application was denied accordingly.

On appeal, counsel asserts that the applicant's U.S. citizen mother, wife, and child would suffer extreme hardship if the applicant is removed. In support of his assertions, counsel submits a psychological report for the applicant's eldest daughter, who was the victim of the applicant's crimes, a statement by his teenage daughter, documents reflecting the purchase of real property, and medical documentation concerning his wife.

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

(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) 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.

In 1987, the applicant was convicted under California Penal Code § 288A for his 1983 and 1986 commission of lewd acts with a child. The applicant committed the crimes over 15 years prior to the adjudication of his application to adjust status. The applicant is therefore eligible to apply for a waiver of inadmissibility pursuant to § 212(h)(1)(A) of the Act. The district director neglected to analyze the waiver application under this section of the provision, confining her analysis to § 212(h)(1)(B). The AAO will therefore examine the evidence in light of the former provision.

The record reflects that the applicant pled guilty to the crimes he committed upon his daughter. Upon careful scrutiny of the entire record, it appears that the applicant in this case has been rehabilitated and does not present a danger to the national welfare. The applicant has not been charged with any other crime since his conviction in 1987. The record contains no indication that he violated the terms of his parole, which was terminated in May of 1991, prior to the five years to which he had been sentenced. The record reflects that he has been continuously employed until this date and that he maintains his household and family. The applicant's wife has stated that the applicant has not drunk alcohol since 1987.

Importantly, the applicant's 32-year-old daughter, who was the victim of the applicant's crimes, affirms that she has forgiven her father and that, over the years, they have established a healthy relationship. The AAO notes that the applicant also has a daughter who will soon be 16 years old, and there is no evidence on the record that the applicant has committed any criminal acts upon her. According to her statement and that of the applicant's wife, the applicant is a supportive, caring father to his teenage daughter.

The record reflects that the applicant meets the requirements for waiver of his grounds of inadmissibility under § 212(h)(1)(A) of the Act. Further, the AAO notes that the applicant's spouse is suffering negative physical consequences as a result of the applicant's potential removal. The applicant's wife's physician, Dr. [REDACTED] wrote on November 5, 2003 that the applicant's wife was diagnosed with acute exacerbation of anxiety, tachycardia, and psoriasis. Photographs of her psoriasis are included on the record. According to her physician, this painful and distressing skin condition worsened concurrent with the applicant's wife's stress level.

The record, then, contains evidence that the applicant qualifies for a waiver pursuant to § 212(h)(1)(A). The record also establishes various favorable factors, such as the applicant's apparent rehabilitation, his sobriety, his continuous employment, his good conduct since 1987 toward his daughters and other family members, his wife's negative physical reaction to the stressful situation, and the applicant's many years of residence in the United States. The only unfavorable factor presented, which, admittedly, must be given great weight in this analysis, is the applicant's conviction for lewd acts upon a child in September 1987. As noted, however, the applicant apparently never repeated such behavior with his own children or with any other children, and he

has regained his family's trust and approval. The applicant has established that the favorable factors in his application outweigh the unfavorable factors.

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.