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

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DEC 29 2004

FILE: [redacted] Office: BANGKOK DISTRICT OFFICE Date:

IN RE: [redacted]

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

ON BEHALF OF APPLICANT: SELF-REPRESENTED

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, Bangkok. 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 the Philippines. The applicant was found inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I). The record reflects that the applicant is the son of a U.S. citizen.

The district director found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, the applicant's mother contends on his behalf that the applicant is rehabilitated and that she needs her son in the United States and working so that he will no longer be a financial burden to her. No new evidence was submitted in support of the appeal. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (i) In general.—Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the elements of—
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> > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, . . .
> >
> > . . .
>
> (ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if—
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> > (I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correction institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or
> >
> > (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of six months (regardless of the extent to which the sentence was actually carried out.

8 U.S.C. § 1182(a)(2)(A). The district director based the finding of inadmissibility under this section on the applicant's conviction in the Philippines for robbery in an inhabited place, for which he was sentenced to two

to six years' imprisonment. *Decision of the District Director* (March 20, 2003) at 2. The district director's determination of inadmissibility is affirmed.

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

> The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . if—
>
> (1) (A) in the case of any immigrant it is established to the satisfaction of the [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
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> (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 [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;
>
> . . . and
>
> (2) the [Secretary], 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. . .

8 U.S.C. § 1182(h). The record reflects that the criminal case against the applicant was filed on June 13, 1980. *Letter from Office of the City Prosecutor, Manila* (October 28, 2002). He was sentenced to a term between 2 years, 10 months and 20 days and 6 years, 1 month, and 11 days. He was released from imprisonment on parole on July 25, 1984, and was granted "final release and discharge as of June 26, 1987." *Republic of the Philippines Ministry of Justice, Board of Pardons and Parole, Final Release and Discharge* (June 26, 1987). The date of conviction is not clear from the record, but based on the minimum sentence and date of discharge, appears to have been some time between the 1980 filing of criminal charges and October, 1981. It appears that the applicant applied for an immigrant visa on or about November 6, 2002. Form I-601, *Application for Waiver of Grounds of Excludability* (filed December 17, 2002).

The record reflects that the applicant meets the first requirement for a waiver of inadmissibility under INA § 212(h)(1)(A), in that more than 15 years elapsed from the date of the conviction to the time of the application for visa. The record reflects that the applicant appears to have had no further arrests since that time. *Letter of Republic of the Philippines Department of Justice, National Bureau of Investigation* (October 15, 2002). It therefore appears that the admission of the applicant would not be contrary to the national welfare, safety, or security of the United States, and that he has been rehabilitated. He is therefore statutorily eligible for a waiver of inadmissibility under INA § 212(h)(1)(A), 8 U.S.C. § 1182(h)(1)(A) and need not establish extreme hardship to a qualifying relative as required for a waiver under INA § 212(h)(1)(B), 8 U.S.C. § 1182(h)(1)(B). The remaining question is whether he is eligible for a favorable exercise of discretion, as provided under INA § 212(h)(2), 8 U.S.C. § 1182(h)(2).

In discretionary matters, the alien bears the burden of proving eligibility in that favorable factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The positive factors in this case include the applicant's rehabilitation and his family ties to his U.S. citizen mother in the United States, and his brothers for whom his mother also filed relative petitions. The negative factor in this case is the crime for which the applicant seeks a waiver of inadmissibility.

The AAO finds that, although the crime committed by the applicant was serious and cannot be condoned, in view of the length of time that has passed since the crime occurred and his lack of further criminal activity, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.