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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: LOS ANGELES, CA Date: AUG 30 2006

IN RE: [redacted]

PETITION: 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 PETITIONER:

[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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the district director, Los Angeles, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Chile who was found to be inadmissible to the United States under section 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 of a crime involving moral turpitude. The applicant is the spouse of a naturalized citizen of the United States and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his wife.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the district director*, dated January 14, 2004.

On appeal, counsel contends that the applicant has provided evidence establishing extreme hardship to his wife. Counsel asserts that the applicant was never convicted for his October 6, 1974 and December 29, 1987 arrests. Counsel further asserts that the applicant was outside of the United States from June 23, 1975 until August 1977, thus complying with his order to leave the United States. *Form I-290B and attorney's brief, dated February 11, 2001.*

In support of his assertions, counsel submits a brief dated February 11, 2001. Also included in the record are a notice from the Superior Court of California, Los Angeles County, dated August 11, 2000; copy of the applicant's Chilean passport; copy of the applicant's Canadian driver's license and social insurance card: letter on behalf of the applicant's spouse written by [redacted]; affidavit from the applicant's spouse, dated October 18, 2001; Judgment, Superior Court of California, County of Los Angeles, dated June 16, 1975; Disposition of Arrest, dated December 29, 1987; Arrest Report, dated December 7, 1974; Arrest Report, dated October 6, 1974; Arrest Report, dated December 29, 1987; Information, Superior Court of California, Los Angeles County, filed February 11, 1975; investigator notes, dated June 2, 1975; letter on behalf of the applicant's spouse written by [redacted] dated December 3, 2003; copy of the applicant's auto insurance; copy of the applicant's bank statements; copy of the applicant's tax statements; copy of the applicant's Chilean birth certificate; copy of the applicant's spouse's U.S. passport; copies of medical prescriptions for the applicant's spouse; letter of employment for the applicant written by [redacted] Branch Manager, [redacted] dated January 2000; letter of employment for the applicant's spouse written by [redacted], Controller, Harrison Sports, dated January 18, 2000; letter of employment for the applicant written by [redacted] Branch Manager, [redacted] dated January 2000; nullification of marriage certificate for the applicant's first marriage, dated April 29, 1971; marriage certificate for the applicant and his current spouse, dated April 2, 1973; and the applicant's spouse's naturalization certificate, dated July 13, 1995. The entire record was considered in rendering a decision on the appeal.

The record reflects that on June 16, 1975 the applicant was convicted of Assault with a Deadly Weapon and sentenced to state prison for the term prescribed by law and probation for five years. *Judgment, Superior Court of California, County of Los Angeles, June 16, 1975.* The court also ordered the applicant to leave the United States

on or before June 22, 1975 and not return to the United States at any time.[1] *Id.* The AAO notes that the applicant was arrested on December 29, 1987 for Assault with a Deadly Weapon other than Firearm or GBI Force, on December 7, 1974 for Assault with a Deadly Weapon, and on October 6, 1974 for Possession of Marijuana. *FBI criminal record printout, dated April 26, 2002. See Also arrest records.* The December 7, 1974 arrest report for the applicant also mentions that the applicant's record reveals an arrest on September 15, 1974 for Assault with a Deadly Weapon. *Arrest Record, dated December 7, 1974.* The applicant was also apprehended by Border Patrol on February 1, 1968 as an overstay visitor and was given voluntary departure by February 12, 1968. *Record of Sworn Statement, dated September 13, 2001.* The applicant did not timely depart the United States. *Id.* On September 5, 1972 the Immigration and Naturalization Service (Service) again apprehended the applicant and charged him with deportation proceedings. *FBI criminal record printout dated April 26, 2002.* The applicant left the United States on June 22, 1975. *Record of Sworn Statement, dated September 13, 2001*; *See Also Chilean passport of the applicant showing entrance into Chile on June 23, 1975.* He remained out of the country until 1977. *Id. See Also Form I-601 stating that the applicant has resided in the United States since August 1977.*

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

> (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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (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

[1] The AAO observes that on June 2, 1975 the judge in the applicant's case stated that if the applicant was in the United States illegally, she wanted him to leave and that she did not want to give him jail time if he was to be deported afterwards. *Investigator notes, dated June 2, 1975.* The judge stated that the applicant was to appear on June 16, 1975 and that he would receive a six-month jail sentence and a "stay of execution" would be granted to give the applicant time to depart the United States. *Id.*

(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 . . .

Although the applicant has numerous arrests, there is only one conviction judgment in the record for Assault with a Deadly Weapon. *Judgment, Superior Court of California, County of Los Angeles, June 16, 1975.* The applicant was charged under section 245(a) of the California Penal Code for willfully, unlawfully, and feloniously committing an assault with a deadly weapon. *Information, Superior Court of the State of California, Los Angeles County, February 11, 1975.* In *Matter of Logan*, the Board of Immigration Appeals found that assault with a deadly weapon was a crime involving moral turpitude. *17 I&N Dec. 367 (BIA 1980).* The AAO finds that based on the one conviction judgment in the record, the applicant has been convicted of a crime involving moral turpitude and is thus inadmissible under 212(a)(2)(A)(i)(I) of the Act.

The AAO notes that the district director erred in determining that the applicant needed to show extreme hardship to his U.S. citizen spouse in order to qualify for a section 212(h) waiver, as the criminal activities occurred in 1974 and the applicant was convicted in 1975, over 15 years ago. He is therefore eligible for consideration under 212(h)(1)(A). To qualify for a waiver, the applicant needs to show that he is not a national security risk and that he has been rehabilitated. The applicant has not had any criminal activity since his 1987 arrest. *FBI criminal record printout dated April 26, 2002.* He is married to a U.S. citizen, has resided at the same address since 1995, and has a stable employment record. He has also consistently paid taxes. *See marriage certificate, letters of employment, dated January 2000, and tax statements.* Based on this, the AAO finds that the applicant's admission would not be contrary to the national welfare, safety, or security of the United States and that he has been rehabilitated. In addition, the AAO finds that these favorable factors outweigh the unfavorable factors of one criminal conviction in 1975 and the applicant's failure to timely depart the United States. The AAO therefore finds that the applicant qualifies for a 212(h) waiver for being inadmissible pursuant to 212(a)(2)(A)(i)(I) of the Act.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden.

ORDER: The appeal is sustained.