



U.S. Citizenship
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FILE:

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Office: LOS ANGELES, CALIFORNIA

Date: JUN 09 2006

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, Chief
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 Mexico who is married to a lawful permanent resident (LPR) and is the beneficiary of an approved petition for alien relative. 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 of a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility in order to reside with his wife 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 LPR spouse; hence, the application was denied. On appeal, counsel points out that the crime occurred over fifteen years prior to the application for adjustment of status, and he asserts that the applicant has been rehabilitated. Counsel contends that waiver should therefore be granted pursuant to § 212(h)(1)(A) of the Act. Counsel also contends that the applicant's wife would suffer extreme hardship in the event of the applicant's inadmissibility.

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.

The applicant was convicted of assault with intent to commit rape pursuant to California Penal Code § 220 on May 7, 1986. Over fifteen years have passed since the activities for which he was found to be inadmissible; thus, the applicant's waiver request may be considered for eligibility pursuant to § 212(h)(1)(A) of the Act. The AAO has reviewed the entire record and finds that the record contains sufficient evidence of the applicant's rehabilitation.

In support of the claim that the applicant has been rehabilitated, counsel points out that the applicant has not been charged with a crime since his conviction in 1986. Counsel notes that the applicant is employed, has bought a home, and supports his wife. The record contains evidence that the applicant has been employed by the same employer since 1987. He has been married to the same woman since 1989, and he has paid income taxes since at least 1995. In addition, the applicant has lived at the same address since at least 2000. There is no evidence in the record that the applicant has been arrested for any criminal activity since 1986. Given his stable employment, marriage, and roots in the community, the AAO finds sufficient evidence of rehabilitation.

The above-listed factors weigh in the applicant's favor in the discretionary analysis of his eligibility for the waiver of inadmissibility. In addition, counsel describes the hardships the applicant's spouse expects as a consequence of the applicant's removal. Counsel mentions the applicant's wife's medical complaints, including a 2002 work-related hand injury, hypertension, hypothyroid condition, and heart trouble, for which she receives medication, pointing out that the applicant is currently the sole breadwinner in the household, and that his employment provides the health insurance that his wife needs. Counsel also stresses that the applicant's wife would suffer emotional pain at being separated from her husband of many years.

Counsel notes that the applicant's wife is originally from El Salvador, and she would suffer hardship if she relocated to Mexico to accompany the applicant, because she has no ties with that country. In her statement submitted with the original I-601 filing, the applicant's wife wrote that she feared she would be unable to obtain suitable medical treatment in Mexico. Counsel also asserts that the applicant and his wife would have to sell their house if they moved to Mexico, and they would lose money. The fact that the applicant's LPR wife would suffer hardship if the applicant were removed weighs in favor of the discretionary grant of the waiver of inadmissibility pursuant to § 212(h)(1)(A) of the Act.

The AAO gives substantial weight to the negative factor present, namely, the criminal activity for which the applicant was convicted in 1986. Nevertheless, it is determined that the positive factors as described above outweigh the negative factors; hence, the applicant is eligible for a waiver of inadmissibility under § 212(h)(1)(A) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under § 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.