U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. 3000
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

H2

FEB 06 2007

FILE: [redacted] Office: LOS ANGELES, CA Date:

IN RE: [redacted]

APPLICATION: 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 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, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Los Angeles, California, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to 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 crimes involving moral turpitude. The record indicates that the applicant has three U.S. citizen children. The applicant seeks a waiver of inadmissibility in order to reside with his family in the United States.

The district director concluded that the applicant failed to establish extreme hardship to his children. *Decision of the District Director*, dated March 30, 2005.

On appeal, the applicant states that he is enclosing certificates of rehabilitation and that he is a changed man. *Form I-290B Supplement*, dated May 7, 2005.

The record includes, but is not limited to, statements from the applicant's children, various certificates and a copy of the applicant's criminal record. The entire record was reviewed and considered in arriving at a decision on the appeal.

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) 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

(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 . . .

On June 20, 1988, the applicant, using the alias [redacted] pled nolo contendere to willful infliction of corporal injury. On January 19, 1990, the applicant was convicted of driving under the influence and causing bodily injury to another person.[1] The AAO notes that an application for admission or adjustment is a "continuing" application, adjudicated based on the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). The applicant's adjustment of status application is currently pending. Therefore, section 212(h)(1)(A) of the Act applies to the applicant as the crimes involving moral turpitude for which the applicant was found inadmissible occurred more than 15 years prior to the applicant's adjustment of status application.

In order to be eligible for a section 212(h)(1)(A) waiver, the applicant must demonstrate that his admission to the United States would not be contrary to its national welfare, safety, or security and that he is rehabilitated. There is no indication that the applicant has ever relied on the government for financial assistance or will rely on the government for financial assistance, as he has a joint sponsor whose income exceeds the required amount on the affidavit of support. The record reflects that the applicant completed the terms of his sentences and probationary periods. The record reflects that the applicant successfully completed an Alcohol Dependency Program. There is no indication that the applicant has been convicted of any crimes since 1990. There is no indication that the applicant is involved with terrorist-related activities. Therefore, the record evidences that admitting the applicant to the United States would not be contrary to its national welfare, safety, or security and the applicant is rehabilitated.

The granting of the waiver is discretionary in nature. The favorable discretionary factors for the applicant include his U.S. citizen children, rehabilitation following his crimes, good character as described in letters of support and the length of time that has passed since his crimes.

---

[1] On December 21, 1989, the applicant was convicted of carrying a loaded firearm. The AAO notes that this is not a crime involving moral turpitude as § 12031 of the California Penal Code does not include any language of intent, willfulness, knowledge or even recklessness. The statute states, "A person is guilty of carrying a loaded firearm when he or she carries a loaded firearm on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory." There is no language of a culpable mental state. In addition, the BIA found that possession of a concealed sawed-off shotgun is not a crime involving moral turpitude. *Matter of Granados*, 16 I&N Dec. 726 (BIA 1979).

The unfavorable factors present in the application are the applicant's criminal convictions and entering the United States without inspection.

The AAO finds that the crimes committed by the applicant cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Therefore, the district director's denial of the I-601 application was improper.

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

ORDER: The appeal is sustained.