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FILE:

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Office: LOS ANGELES, CA

Date:

JAN 17 2007

IN RE:

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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:

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 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 Mexico who was found to be inadmissible to the United States under sections 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 the father of three U.S. citizen children. He 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 and children.

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 December 20, 2004.*

On appeal, the applicant contends that he has supported his three U.S. citizen children and that his crimes occurred more than seventeen years ago. *Statement by the applicant; Form I-290B.*

In support of his assertions the record includes, but is not limited to a criminal history transcript from the state of California; several employment letters for the applicant; tax statements; criminal records dated November 30, 2004; and FBI criminal history printouts. The entire record was considered in rendering a decision on the appeal.

The record reflects that on March 10, 1976 the applicant was arrested for misdemeanor drunk driving. He was subsequently convicted and received a fine. On January 7, 1991 his conviction was expunged. On March 11, 1976 the applicant incurred a minor traffic violation. On December 3, 1981 the applicant was arrested for Assault with a Deadly Weapon. On March 2, 1982 the court dismissed the charges of Carrying a Concealed Weapon and Carrying a Loaded Firearm, but convicted the applicant of Exhibiting a Deadly Weapon/Firearm. The applicant received a 12 month probation sentence and on July 27, 1990 the conviction was set aside and dismissed. On February 4, 1983 the applicant was convicted of Carrying a Loaded Firearm in a Public Place for which he received a sentence of 90 days in jail and 18 months of probation. On June 15, 1983 the applicant was convicted of Disorderly Conduct: Prostitution for which he received 12 months probation, 3 days in jail or a fine. On May 27, 1983 the applicant was arrested for Pimping. This charge was dismissed on February 24, 1984. On November 29, 1983 the applicant's charges of Carrying a Concealed Weapon Firearm on Person, Receiving Stolen Property, and Carrying a Loaded Firearm were all dismissed. On February 24, 1984 the charge of Keeping a Disorderly House was dismissed. On June 24, 1984 the applicant was arrested for Possession Narcotics Controlled Substance. On February 22, 1985 proceedings were suspended and the applicant was placed into a diversion program for this offense. On March 10, 1986 the applicant completed his diversion program and the charge was dismissed. On August 11, 1994 the applicant was convicted of Disturbing the Peace and was ordered to pay a fine.

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
- (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 several criminal convictions, his only conviction that constitutes a crime involving moral turpitude is for Disorderly Conduct: Prostitution.<sup>1</sup> *Matter of Lambert*, 11 I&N Dec. 340 (BIA 1965). Thus, he is inadmissible under section 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 his most recent criminal conviction that constituted a crime involving moral turpitude occurred in 1983, over 15 years ago. 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 in 12 years. *FBI criminal record printout dated January 10, 2003; criminal records dated November 30, 2004*. The applicant has a U.S. citizen spouse, three U.S. citizen children, and a U.S. citizen grandchild. *Form I-485; Form I-601*. The applicant has a consistent work history and has paid taxes. *See letters of employment; tax statements*. The AAO finds that these favorable factors outweigh the unfavorable factors of his prior criminal convictions and the applicant's entry into the United States without inspection. 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.

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<sup>1</sup> The AAO notes that the applicant's charge of Possession Narcotics Controlled Substances does not render him inadmissible, as the record does not contain a guilty plea and the applicant entered and successfully completed a diversion program which resulted in the charge being dismissed.

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.