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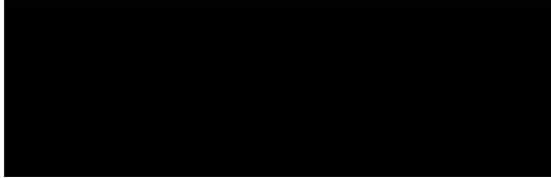
U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUL 09 2007

IN RE:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Cuba 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 record indicates that the applicant is married to a United States citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his United States citizen wife and United States citizen mother.

The Director found that the applicant 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 Director*, dated July 6, 2006.

On appeal, the applicant states he has “broken with [his] past lifestyle and now [he is] a married man.” *Form I-290B*, filed August 1, 2006.

The record includes, but is not limited to, an affidavit by the applicant’s wife, letters of recommendations, criminal court dispositions from Broward County, Florida, and an arrest record from Miami-Dade Police Department. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on September 27, 1984, the applicant was convicted of grand theft by a Circuit Court judge in the County of Broward County, Florida, and was sentenced 18 months probation.

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...

The applicant was convicted of grand theft on September 27, 1984. The applicant applied for adjustment of status on April 12, 2004. *Form I-485*, filed April 12, 2004. Therefore, the crime involving moral turpitude for which the applicant was found inadmissible occurred more than 15 years prior to the applicant's application for adjustment of status.

The AAO finds that the Director erred in basing his decision on section 212(h)(1)(B) of the Act and failing to consider the eligibility of the applicant for a waiver under section 212(h)(1)(A). The record reflects that on November 12, 1986, the applicant was convicted of fleeing from a police officer, reckless driving, and driving with a suspended license. Additionally, on May 29, 2002, the applicant was arrested for a commercial vehicle marking violation; however, he was not convicted of any crime. Therefore, the applicant has not been convicted of any additional crimes since his last conviction in 1986. The AAO notes that the applicant states that he has "broken with [his] past lifestyle." *Form I-290B*, filed August 1, 2006. The applicant's friend, [REDACTED], states the applicant "has overcome and outgrown his past teenage issues." *Letter from [REDACTED]*, dated July 28, 2006; *see also letter from [REDACTED]*, dated July 28, 2006 ("[The applicant] is very trustworthy, dependable, and very conscientious."). There are no additional convictions on the applicant's record further attesting to his rehabilitation and the record of proceedings does not establish that the admission of the applicant to the United States would be "contrary to the national welfare, safety, or security of the United States."

The record reflects that the applicant meets the requirements for waiver of his grounds of inadmissibility under section 212(h)(1)(A) of the Act. Further, the AAO notes that the applicant's spouse and stepchildren would suffer hardship as a result of their separation from the applicant. *Affidavit from [REDACTED]*, dated July 28, 2006 ("[The applicant] is a great father figure to both of my children who proudly look up to him because he is sincere, honest and a wonderful person.").

The favorable factors presented by the applicant are the hardship to his United States citizen wife and stepchildren, his letters of recommendations, and the lack of any other criminal convictions since his last conviction in 1986.

The unfavorable factors presented in the application are the applicant's convictions for grand theft in 1984, fleeing from a police officer, reckless driving, and driving with a suspended license in 1986. The AAO notes that the applicant has not been charged with any crimes since his last conviction and the applicant's crimes occurred more than 20 years ago.

While the AAO does not condone his actions, the applicant has established that the favorable factors in his application outweigh the unfavorable factors. The Director's denial of the I-601 application is withdrawn.

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

ORDER: The appeal is sustained and the application is approved.