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U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES, CA

Date:

SEP 20 2007

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:

[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.

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 District Director, Los Angeles, California, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved.

The applicant, a citizen of Nicaragua, was found 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 son of lawful permanent resident parents, the spouse of a U.S. citizen, and the parent/step-parent of U.S. citizen children; he seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with the aforementioned qualifying relatives. The entire record was reviewed and considered in rendering a decision on this appeal.

Section 212(a)(2) of the Act provides, in pertinent part:

(A)(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 [now Secretary, Homeland Security, (Secretary)] may, in his discretion, waive the application of subparagraphs (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 . . .

- (2) The Attorney General (Secretary), in his discretion . . . has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility under section 212(h)(1)(B) of the Act.

The AAO finds the analysis as to whether the applicant's qualifying relatives would suffer extreme hardship if the applicant were removed to Nicaragua unnecessary, as a waiver of inadmissibility is now available to the applicant under section 212(h)(1)(A) of the Act. The applicant was convicted of Robbery under section 211 of the California Penal Code, based on a December 9, 1991 incident and subsequent arrest. Therefore, the crime involving moral turpitude for which the applicant was found inadmissible occurred more than fifteen years ago. The record does not establish that the applicant's admission to the United States would be contrary to the national welfare, safety, or security of the United States. Moreover, the record indicates that the applicant has not been convicted of any crimes since his 1991 arrest, at 18 years of age, which indicates rehabilitation.

To further support the applicant's rehabilitation, the applicant provides an affidavit. In said affidavit, the applicant states "...I was arrested for Robbery in the year 1991 after I had just turned 18 years old...I was sentenced to seven years at the California Youth Authority. I paid the price of wasting away 4 ½ years of my life in the California Youth Facility in Chino, California. Although I would not say it was a complete waste since I was able to take up a trade and earn high school credits and also received counseling. I wish I could take that day back. Writing this is very embarrassing to me and having to relive the biggest mistake of my life is very hard and shameful for me sine I cannot believe I took part in that robbery that night...when I was 18 years old. I truly regret and am remorseful for what happened and I feel so foolish...I do not want to make excuses for myself but at the time when this incident happened I had just turned 18 years old, about 1 ½ months earlier, and I was not very mature...I am now a 32 year old man with a wife and children and elderly parents who need me and I would never make such a foolish mistake again or hang out with anyone who is a bad influence or that could get me into trouble. I dedicate my time to my family and working. I am not a violent or dangerous person and I have been rehabilitated. I am in no way a danger to the public or to anyone..." *Affidavit from* [REDACTED] *dated February 15, 2006.*

The applicant's spouse, a U.S. citizen, affirms the applicant's statements regarding his rehabilitation. As stated by [REDACTED] "...I met [REDACTED] [the applicant] in 2002 after his arrests. He told me about his criminal conviction in 1991 for Robbery after he had just turned 18 years old. [REDACTED] has been rehabilitated and is a very good man and is not a violent or dangerous person or a threat to the community. He does not have any bad habits or vices and is a good example to our children. He is a wonderful husband, father, and son and is of value and service to the community..." *Affidavit from* [REDACTED] *dated February 9, 2006.*

Counsel also provides corroborating documentation to corroborate the applicant's and the applicant's spouse's statements regarding the applicant's rehabilitation. To begin, counsel provides copies of certificates issued to the applicant for accomplishments post-conviction, including a Certificate of Recognition for a Basic Education Drawing Competition, issued on December 23, 1992; Certificates of Achievement for participating in a roofing program, issued in October 1993 and November 1994; a Competency Certificate with respect to Auto Body Repair, issued on August 8, 1994; a Certificate of Completion in the Employment Re-Entry Program, dated March 23, 1998; a Certificate of Completion of the General Education Development (GED) Program on April 16, 1998; and evidence of passage of the GED on July 9, 1998.

In addition, a letter is provided by [REDACTED], Superintendent, Southwest Pipeline and Trenchless Corporation, confirming that as of October 2002, "[REDACTED] [the applicant] has been under my supervision and has demonstrated exemplarily (sic) work ethic. [REDACTED] is and has been a valued employee; he is always on time and is very conscientious of his responsibilities. [REDACTED] is a (sic) asset to this company and to his crew..." *Letter from [REDACTED], Superintendent, Southwest Pipeline and Trenchless*, dated November 28, 2005.

Counsel also provides a letter from [REDACTED] recommending the applicant "...for helping me out as assistant coach of the boy's basketball team at DJAA. He's very patient and understanding of the kids and he always helps out during practices and games. He has a good personality and gets along with all the parents. He is responsible, reliable and always on time..." *Letter from [REDACTED]* dated February 16, 2006.

The record reflects that the applicant meets the requirements for a waiver of inadmissibility under section 212(h)(1)(A) of the Act. Further, the AAO notes that the applicant's spouse, children and parents, all U.S. citizens or lawful permanent residents, would suffer emotional, psychological and financial hardship as a result of their separation from the applicant. However, the grant or denial of the waiver does not turn only on the mere passage of fifteen years of time. It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other

evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, “[B]alance the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented on the alien’s behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.” *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the applicant’s lawful permanent resident parents, his U.S. citizen spouse, his U.S. citizen children and step-children, hardship that the qualifying relatives would face if the applicant were not present in the United States, the applicant’s long-term gainful employment, support letters from friends and family on behalf of the applicant, community ties, certificates of achievement and completion awarded to the applicant post-conviction, and the passage of more than 15 ½ years since the violation that lead to conviction. The unfavorable factors in this matter include the applicant’s criminal conviction, his unauthorized presence in the United States and unlawful employment.

The crime committed by the applicant was serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary’s discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved.