U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: ATHENS, GREECE Date: APR 01 2009

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act (INA), 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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Athens, Greece. 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 Ethiopia 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 a crime involving moral turpitude. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with his wife in the United States.

The officer in charge found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Officer in Charge*, dated August 8, 2006.

The record contains, *inter alia*: conviction documents; letters from the applicant's employers; a Pardon from the Canadian government; and two letters from the applicant. The entire record was reviewed and considered in rendering this decision on the appeal.

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 (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 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.
>
> (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 record shows that the applicant was convicted of assault in violation of section 266 of the Criminal Code of Canada on April 7, 1993. The AAO notes that the officer in charge evaluated the applicant's waiver application for extreme hardship to a qualifying relative under section 212(h)(1)(B) of the Act. However, even assuming a conviction under section 266 of the Criminal Code of Canada is a crime involving moral turpitude, as explained below, the AAO finds that the applicant has shown that he is eligible for a waiver under section 212(h)(1)(A).

A section 212(h)(1)(A) waiver is dependent upon a showing that the activities for which the alien is inadmissible occurred more than fifteen years before the date of the alien's application for a visa, admission, or adjustment of status; the alien's admission to the United States would not be contrary to the national welfare, safety, or security of the United States; and the alien has been rehabilitated. *See* section 212(h)(1)(A) of the Act, 8 U.S.C. § 1182(h)(1)(A). Once eligibility for a waiver is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

In this case, the applicant has shown that he is eligible for a section 212(h)(1)(A) waiver. An application for admission or adjustment is a "continuing" application, adjudicated on the basis of the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). There has been no final decision made on the applicant's application for admission, so the applicant, as of today, is still seeking to be admitted to the United States. The applicant's conviction occurred on April 7, 1993. Therefore, the activities for which the applicant is inadmissible occurred more than fifteen years before the date of the alien's application for admission.

In addition, the evidence indicates that the applicant has been rehabilitated and his admission to the United States would not be contrary to the national welfare, safety, or security of the country. In a letter from the applicant, he explains that he got into a "heated argument" with his ex-wife. *Letter from* [redacted], dated February 25, 2005. The applicant states he has never had any other problem with the law and is now happily married to his current wife. *Id.* He also states that he was granted a pardon by the Canadian government for good conduct. *Id.* Based on this information, the AAO finds that the applicant has been rehabilitated and his admission is not contrary to the national welfare, safety, or security of the United States.

The AAO further finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

The adverse factor in this case is the applicant's conviction for assault. The positive factors in this case include the applicant's significant family ties in the United States, including his U.S. citizen wife to whom he has been married for over thirteen years, two U.S. citizen brothers, and a U.S. citizen uncle. In addition, the applicant has no immigration violations and has not had any further convictions for over fifteen years.

The AAO finds that, although the applicant's criminal history is serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.