**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

**U.S. Citizenship and Immigration Services**

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

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Date: SEP 09 2011 Office: GARDEN CITY, NEW YORK FILE: [redacted]

IN RE: Applicant: [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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Michael Rhumway

for Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION**: The waiver application was denied by the District Director, Garden City, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Colombia 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. He seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife and children.

The district director denied the Form I-601 application for a waiver, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director,* dated August 29, 2009; *Decision of the District Director on Motion to Reopen*, dated April 8, 2010.

On appeal, counsel for the applicant asserts that the applicant has shown that his wife and children will suffer extreme hardship should the present waiver application be denied. *Statement from* [redacted] dated May 4, 2010.

The record contains, but is not limited to: briefs from counsel; copies of medical records for the applicant's wife; statements from the applicant's wife, children, and employer; documentation regarding mental health services received by the applicant's children and wife; documentation in connection with the applicant's criminal history; documentation of the applicant's employment, taxes, banking, property, and expenses; and evidence of the applicant's travel between Florida and New York. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
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> > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.
>
> (ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-
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> > (I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

> (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

> [M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....
>
> In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The record shows that on or about February 24, 1989 the applicant was convicted of a Federal offense relating to credit card fraud and the unauthorized use of telephone credit card numbers and access numbers. Sections of law cited regarding his conviction include 18 U.S.C. §§ 1029(A)(2) and (A)(3), 1029(C)(1), and 3351(1)-(2). The applicant failed to appear for sentencing and was declared a fugitive until he was sentenced to four months of incarceration, three months of probation, and a monetary assessment on or about June 28, 1996. The applicant began his sentence on August 9, 1996, and he was released on September 20, 1996.

While the applicant was a fugitive from the above-discussed sentencing, he was further convicted of possession of a forged instrument in the third degree pursuant to New York Penal Law section 170.20 on or about September 11, 1995, for which he paid a $250 fine. He was also convicted of shoplifting under New Jersey Criminal Code § 2C:20-11B(1) on or about February 17, 1996, for which he paid a $250 fine and costs.

The district director indicated that the applicant was arrested by State police in Salt Point, New York on August 27, 1996 and charged with criminal possession of a forged instrument. However, upon examination of the documentation of the applicant's criminal history, is it evident that the August 27, 1996 database entry regarding a charge of criminal possession of a forged instrument in fact relates to his conviction on September 11, 1995 for this offense. It is noted that the applicant was incarcerated on

August 27, 1996, the date of the database entry. Accordingly, there is ample documentation in the record to support that the applicant's last conviction occurred on or about February 17, 1996.

The applicant does not contest that he has been convicted of crimes involving moral turpitude, or that he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Offenses involving theft and fraud are generally crimes involving moral turpitude. As the waiver application will be approved as a matter of discretion under section 212(h)(1)(A) of the Act, the AAO will assume that the applicant's convictions are crimes involving moral turpitude for purposes of this appeal.

Section 212(h) of the Act provides, in pertinent part, that:

> The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .
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> (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –
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> (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,
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> (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
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> (iii) the alien has been rehabilitated; or
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> (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 . . .; and
>
> (2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

The applicant's most recent conviction, for shoplifting, occurred on or about February 17, 1996. As his culpable conduct took place over 15 years ago, he meets the requirement of section 212(h)(1)(A)(i) of the Act.

The record does not reflect that admitting the applicant would be contrary to the national welfare, safety, or security of the United States. Section 212(h)(1)(A)(ii) of the Act. The record does not show that the applicant has engaged in violent or dangerous behavior at any time, and his criminal convictions involved property crimes. The record does not show that the applicant has engaged in criminal activity since his last conviction in 1996. The applicant has not been a public charge since his arrival in approximately 1985. Accordingly, the applicant has shown that he meets the requirement of section 212(h)(1)(A)(ii) of the Act.

The applicant has shown by a preponderance of the evidence that he has been rehabilitated. Section 212(h)(1)(A)(iii) of the Act. As discussed above, there is no evidence that he has engaged in criminal activity since his conviction in 1996. The record shows that he has conducted himself well during the last 15 years, including purchasing property in the United States, working and paying taxes, and providing emotional and economic support for his U.S. citizen wife and three children. As of June 2010 he had worked for the same employer for six years. The record does not reflect that the applicant has a propensity to engage in further criminal activity. Accordingly, the applicant has shown that he meets the requirement of section 212(h)(1)(A)(iii) of the Act.

Based on the foregoing, the applicant has shown that he is eligible for consideration for a waiver under section 212(h)(1)(A) of the Act.

In determining whether the applicant warrants a favorable exercise of discretion under section 212(h) of the Act, the Secretary must weigh positive and negative factors in the present case.

The negative factors in this case consist of the following:

The applicant has been convicted of multiple crimes, including fraud and theft offenses that call into question his moral character. The applicant has remained in the United States for a lengthy period without a legal immigration status.

The positive factors in this case include:

The applicant's wife has been diagnosed with breast cancer for which she has received treatment in the United States, and the record supports that she would endure significant hardship should the applicant depart. The applicant has substantial family ties to the United States, including his wife and three children; the applicant has not been convicted of a crime since 1996, in approximately 15 years; the applicant owns property in the United States; the applicant works and pays taxes; and the applicant provides emotional and economic support for his U.S. citizen wife and children. The AAO has considered the fact that the applicant and one of his sons resides in New York, while his wife and two younger children reside in Florida. However, it is evident that he travels to visit his family in Florida, they depend on his support, and they remain close.

While the applicant's criminal activity and violation of U.S. immigration law cannot be condoned, the positive factors in this case outweigh the negative factors.

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 remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden that he merits approval of his application.

**ORDER:** The appeal is sustained.