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U.S. Citizenship
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HQ MAR 08 2015

[Redacted]

FILE: [Redacted] Office: LOS ANGELES DISTRICT OFFICE Date:

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:

[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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles. 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 Mexico. The applicant was found inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I). The record reflects that the applicant is the mother of five daughters, three of whom are lawful permanent residents and one of whom is a U.S. citizen, and one son.

The district director found that the applicant failed to establish extreme hardship to her daughters and denied the application accordingly.

On appeal, counsel contends that the applicant was given 90 days from July 26, 2003, or until October 24, 2003, to submit additional evidence and that the denial was issued prematurely on September 17, 2003. Counsel also contends that the applicant's daughters would suffer extreme hardship if she is refused admission. In support of the appeal, counsel submits Form I-864, *Affidavit of Support*, with supporting documentation, letters from the applicant's daughters and grandchildren, evidence of her daughters' citizenship and lawful permanent resident status. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(i) In general.—Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the elements of—

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, . . .

...

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if—

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correction institution imposed for the crime) more than 5 years before the date of 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 six months (regardless of the extent to which the sentence was actually carried out.

8 U.S.C. § 1182(a)(2)(A). The district director based the finding of inadmissibility under this section on the applicant's multiple convictions for petty theft and burglary. *Decision of the District Director* (September 17, 2003) at 2. She therefore does not qualify for the exceptions stated above, applicable solely to certain aliens who committed only one crime. The record reflects that the applicant has been arrested six times between 1979 and 1989 for theft, petty theft, burglary, and false identification to a police officer. She was convicted of burglary three times, and at least once for petty theft. The district director's finding of inadmissibility is affirmed, and the question remains whether the applicant is qualified for a waiver.

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

The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B) . . . 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 [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 [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. . .

8 U.S.C. § 1182(h). As noted above, the activities for which the applicant was last convicted occurred in July 1989, over 15 years ago. The applicant therefore meets the first part of the three requirements for eligibility for a waiver of inadmissibility under INA § 212(h)(1)(A). A Federal Bureau of Investigation (FBI) Record of Arrest and Prosecution ("RAP Sheet") for the applicant, dated July 30, 2003, shows that she has had no further criminal charges since 1989. Her lack of a criminal record for over 15 years is substantial evidence of her rehabilitation. It therefore also appears that her admission would not be contrary to the national welfare, safety, or security of the United States. She is therefore statutorily eligible for a waiver of inadmissibility under INA § 212(h)(1)(A), 8 U.S.C. § 1182(h)(1)(A) and need not establish extreme hardship to a qualifying relative as required for a waiver under INA § 212(h)(1)(B), 8 U.S.C. § 1182(h)(1)(B). The remaining question is whether she is eligible for a favorable exercise of discretion, as provided under INA § 212(h)(2), 8 U.S.C. § 1182(h)(2).

In discretionary matters, the alien bears the burden of proving eligibility in that favorable factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The positive factors in this case include the applicant's rehabilitation and her family ties to her U.S. citizen and lawful permanent resident children and grandchildren in the United States, including several who submitted statements on her behalf. The negative factors in this case are the crimes for which the applicant seeks a waiver of inadmissibility.

The AAO finds that, although the crime committed by the applicant was serious and cannot be condoned, in view of the length of time that has passed since the crimes occurred and her lack of further criminal activity, 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.