



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

H2

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES DISTRICT OFFICE

Date: DEC 19 2006

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, Chief  
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 applicant, [REDACTED], a national and citizen of Mexico, 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. [REDACTED] seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain with his U.C. citizen spouse in the United States.

The District Director based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's conviction on November 15, 1989 of "Grand Theft Auto," for which he was sentenced to serve 365 days in the county jail; his conviction in 1981 for "Receiving Known Stolen Property"; and in 1983, for burglary. *District Director's Decision*, dated February 17, 2005.

The District Director also 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 Inadmissibility (Form I-601) accordingly, based on the requirements of section 212(h)(1)(B) of the act. *Id.*

On appeal, counsel contends that "[t]he Service has not balanced the hardship factors correctly. The Service did not review all the factors in the accumulative as required in the decision of Matter of Anderson and in the Matter of O-J-O." *Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B)*, filed March 21, 2005. Counsel noted on Form I-290B that she would be sending a brief and/or evidence to the AAO within 30 days of filing the appeal. The appeal was filed on March 21, 2005. However, as of October 25, 2006, the AAO had received no further documentation or correspondence from the applicant or counsel. On October 25, 2006, the AAO sent a facsimile to counsel with notice that no brief or additional evidence had been received, and affording five days in which to provide a copy of any missing filing. As of the date of this decision, the AAO has not received a response to the facsimile, and the record is deemed complete.

The record includes (1) a statement from the applicant's wife noting that [REDACTED] had a hard life and has overcome his past and "earned the trust and respect of all who know him"; that he had to take care of his mother and younger brother when he was very young himself and he saw his mother sicken and die when the three of them were homeless; that they met in 1983, married in 1997 and are totally committed to one another; (2) a statement from [REDACTED] confirming their commitment and noting that he came to the United States in 1971 to join his mother and brother in Los Angeles where he found out that his mother suffered from epilepsy and could not maintain steady employment due to her seizures; he had to withdraw from school at the age of 16 to care for her and his brother; and when his mother died, the three of them were living in his car; he states that he made bad choices and takes full responsibility for them, but that he has tried to improve, for himself, his wife and the only country he has ever known; (3) numerous affidavits of support and recommendation for [REDACTED] from his family in the United States: his brother, father-in-law, sister-in-law, brother-in-law, cousin, and wife's former sister-in-law, all of whom are U.S. citizens; and twelve affidavits from friends in the United States, all of whom confirm that he has contributed to the welfare of those around him and attest to his good character; (4) proof of the applicant's home ownership; (5) proof of employment; (6) proof that he and his wife have filed joint taxes from 1998 through 2002; and

(7) [REDACTED] school transcripts from 1972 to 1981. [REDACTED]'s "Criminal History Transcript" from the California Department of Justice, Bureau of Criminal Identification is also included. The entire record was considered in rendering a 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, that:

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) . . . 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; 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 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 . . . (emphasis added)

According to his California Criminal History Transcript, [REDACTED] has been convicted of four offenses: (1) on October 22, 1981, he pled *nolo contendere* and was convicted of receipt of stolen property, for which he was sentenced to 24 months probation, 90 days of jail (suspended sentence) and a fine; the case has been purged or destroyed in compliance with California laws relating to case destruction; (2) on February 7, 1983, he was convicted of grand theft auto, a misdemeanor (the transcript does not note the sentence); (3) on October 24, 1983, he was convicted of burglary, a misdemeanor, for which he was sentenced to 24 months probation and ten days in jail; (4) and on November 15, 1989, he was convicted of grand theft auto, a felony, and sentenced to 36 months probation, 365 days in jail (imposition of sentence suspended) and ordered to pay restitution; probation was successfully completed. Although counsel states that [REDACTED] had an additional conviction for violation of the California Vehicle Code on September 14, 1987, there is

no evidence of this conviction in the record. The Criminal History Transcript notes six other arrests between 1981 and 1989: for grand theft auto as a juvenile in 1981; for burglary in 1981 a month after he turned 18; again in 1981 for receipt of stolen property and tampering with a vehicle; for grand theft auto in 1982; for attempted grand theft auto in 1983; and attempted grand theft auto in 1989. The record indicates that all of [REDACTED] convictions were for activities that occurred over 15 years ago. As his current application for adjustment of status is pending, and it is more than 15 years after the occurrence of the activities for which he is inadmissible, he is statutorily eligible for a waiver pursuant to section 212(h)(1)(A) of the Act. See *Matter of Alarcon*, 20 I & N Dec. 557, 562 (BIA 1992) (clarifying that an application for adjustment of status, similar to an application for admission, “is a continuing application, and inadmissibility is determined on the basis of the facts and the law at the time the application is finally considered” (emphasis added)). [REDACTED] application remains pending until a final determination is made on this appeal.

The AAO finds that the District Director erred in basing his decision on section 212(h)(1)(B) of the Act and failing to consider the eligibility of [REDACTED] for a waiver under section 212(h)(1)(A), for which he was eligible on February 17, 2005, the date of the decision on his waiver application. The AAO also finds that the applicant meets the requirements of section 212(h)(1)(A) of the Act and that there is thus no need to make a hardship determination as required under section 212(h)(1)(B) of the Act.

The record reflects that [REDACTED] was born in Mexico in 1963, and that he came to the United States when he was approximately nine years old to join his mother and younger brother. His brother was born in Los Angeles in 1969. They had no other family, and he became the caretaker for his mother and brother at a young age; his mother had epilepsy and was unable to support the family, and they became homeless; as described by his brother, [REDACTED] had to drop out of school in an attempt to sustain all of us.” His mother continued to suffer from epileptic seizures and died in 1991. [REDACTED] wife was born in 1963 in Los Angeles; they met in 1983 and were married in Los Angeles in 1997. Statements from his wife, his brother, other family members and friends all praise [REDACTED] “efforts and triumphs” in overcoming a troubled youth and turning his life around. His wife’s father, when he first met [REDACTED] as a young man dating his daughter, states that he was uncomfortable with the relationship, but that he has come to not only respect him, but to depend on him financially, particularly for medical assistance, and to fully trust him. [REDACTED]’s brother, his wife and her extended family, and friends comprise a solid support system for him, and they all indicate their admiration and trust for him. [REDACTED] criminal activity started when he was a teenager; his record shows the problems he had with the law in the past. However, there is every indication that he has made dramatic changes in his life. There is evidence that he successfully completed probation for his most recent conviction in 1989, and his record is otherwise clean since that time. He and his wife have a loving and committed relationship, he has made an effort and succeeded in developing his skills as a mechanic, has consistently worked and paid taxes, and is respected by those who know him. The record does not establish that his admission to the United States would be “contrary to the national welfare, safety, or security of the United States.” He has clearly demonstrated rehabilitation. He has therefore met the requirements for a waiver of his ground of inadmissibility under section 212(h)(1)(A) of the Act.

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 rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden.

**ORDER:** The appeal is sustained.