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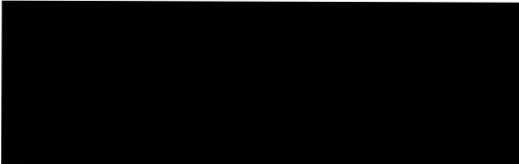
U.S. Department of Homeland Security
20 Mass, Rm. A3000, N.W.
Washington, DC 20529



U.S. Citizenship
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FILE:



Office: LOS ANGELES, CA

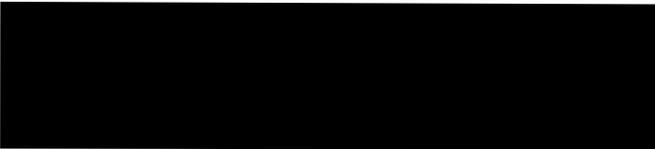
Date: **JUN 28 2006**

IN RE:



PETITION: 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 PETITIONER:



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, CA and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be 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 spouse of a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his wife and three children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 22, 2004.

On appeal, counsel contends that the director's decision was arbitrary, capricious and an abuse of discretion. Counsel also asserts that the crime the applicant committed, assault with a deadly weapon, is not a crime involving moral turpitude.¹ *Brief in Support of Appeal*, dated November 18, 2004.

The record reflects that on June 3, 1991, the applicant committed the crime of assault likely to cause great bodily injury with a deadly weapon when he used a stabbing instrument to inflict an injury. On June 17, 1991 he was convicted of the offense and sentenced to 270 days in jail with three years probation.

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 . . . 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 [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (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

¹ The AAO notes that the applicant committed the crime of assault with a deadly weapon, great bodily harm by using a stabbing instrument to inflict bodily harm. Counsel asserts that cases of simple assault, assault to commit a felony where the felony is not a crime of moral turpitude, or assault related to resisting arrest are not crimes involving moral turpitude. The AAO finds that the applicant's crime was a crime involving moral turpitude. Courts have found that the crime of assault constitutes a crime of moral turpitude where great bodily injury and use of a deadly weapon are involved. See *Matter of Fualaau*, 21 I&N Dec. 475, 476 (BIA 1996). In the applicant's case both of the elements named in *Matter of Fualaau* are present. Therefore, the applicant's crime does constitute a crime of moral turpitude.

- 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 . . .

The applicant was convicted of the crime of assault with a deadly weapon likely to cause great bodily harm on June 3, 1991, based on actions taken by the applicant on June 3, 1991. An application for admission or adjustment is a "continuing" application adjudicated based on the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). Thus, at the present time the applicant is applying for admission. Therefore, the crime involving moral turpitude for which the applicant was found inadmissible occurred more than 15 years prior to the applicant's application for admission.

The record reflects that the applicant was convicted of a misdemeanor on October 16, 1999 when he violated a court order to prevent domestic violence. In addition, the record does not establish that the applicant has been rehabilitated. In counsel's statement labeled "Attachment A" he asserts that the applicant has been volunteering and taking counseling classes. Counsel submits no documentary evidence to support these assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The applicant also submitted letters from his two sons attesting to his rehabilitated character. However, because of the applicant's criminal record from 1999, the seriousness of his 1991 conviction and the lack of supporting evidence regarding his rehabilitation, the AAO finds that the applicant's admission may be contrary to the welfare of the United States and the applicant has not been rehabilitated.

Furthermore, the applicant has not shown that he warrants a favorable exercise of the Secretary's discretion. The applicant submitted no documentation supporting his son's statements that his inadmissibility would cause extreme hardship to his wife and children. Therefore, the applicant has not established that the favorable factors in his application outweigh the unfavorable factors.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.