



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE:

[Redacted]

Office: CHICAGO, ILLINOIS

Date: MAY 16 2006

IN RE:

[Redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under § 212(h) of the Immigration and Nationality Act, 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The applicant is a native and citizen of Canada who is married to a U.S. citizen and has a U.S. citizen child. The applicant was found to be inadmissible to the United States under § 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 seeks a waiver of inadmissibility pursuant to § 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his wife and daughter.

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. On appeal, counsel contends that the applicant's wife would experience extreme hardship if the applicant were removed, because she has serious health concerns. Counsel also points out that the applicant now has a U.S. citizen daughter, who would also suffer extreme hardship if she were separated from the applicant. Counsel does not address the possibility of the applicant's family's relocation to Canada to accompany him, should he be removed. The AAO observes that over fifteen years have passed since the time of the activities for which the applicant is inadmissible, raising the possibility for a waiver under § 212(h)(1)(A) of the Act.

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 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 record reflects that in 1983 when the applicant was sixteen years old, he was convicted of breaking and entering, theft, and violation of probation. In 1984, when he was seventeen years old, he was convicted of breaking and entering with theft, breaking and entering with intent to commit a crime, one count of theft over \$200 and one count of theft under \$200, breach of probation, and failure to appear. In 1989 he committed a theft of under \$1000 for which he was convicted in 1991. All the crimes occurred in Canada. The applicant was punished with a suspended sentence and two years' probation for each 1983 violation. He was sentenced to approximately five months' incarceration at a minimum security facility for his 1984 violations. The applicant's 1991 sentence was suspended, and he was placed on probation for eighteen months. There is no evidence of any criminal activity after 1989. Therefore, the crimes involving moral turpitude for which the applicant was found inadmissible occurred more than fifteen years prior to the applicant's application for a visa.

The applicant does not possess a criminal record in the United States, and there is no evidence that the admission of the applicant to the United States would be "contrary to the national welfare, safety, or security of the United States." The applicant has been continuously employed since 1991, and he has a stable family in the United States. His employment and lack of a criminal record subsequent to his 1991 conviction (based on his 1989 crime) demonstrates the applicant's rehabilitation. Moreover, medical information on the record indicates that the applicant's wife has symptoms of either kidney disease or lupus, which may be serious health issues. The unfavorable factors presented in the application include the applicant's Canadian criminal record. Although the applicant committed crimes involving moral turpitude, the AAO notes that none was a violent crime, and most of the activity occurred when the applicant was under eighteen years old.

The AAO does not minimize the negativity of the applicant's youthful criminal activity; however, the evidence establishes that the favorable factors in his application outweigh the unfavorable factors. The record reflects that the applicant meets the requirements for waiver of his grounds of inadmissibility under § 212(h)(1)(A) of the Act.

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 now met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained and the application is approved.