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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE:

Office: LOS ANGELES, CA

Date: JUL 03 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the district director, Los Angeles, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 United States citizen and the father of a lawful permanent resident. He 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 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. *Decision of the District Director, dated March 2, 2005.*

On appeal, counsel contends that the applicant provided evidence establishing extreme hardship to a qualifying relative. Counsel also asserts that the Service used an erroneous standard in determining whether the applicant has established the requisite hardship necessary under a section 212(h) waiver. *Form I-290B, dated March 30, 2005 and attorney's brief, dated June 29, 2005.*

In support of his assertions, counsel submits a brief dated June 29, 2005. The record also includes, but is not limited to, a brief dated January 17, 2003; copies of the death certificates of the applicant's family members; employment letters for the applicant and his spouse; earnings statements for the applicant; a declaration from the applicant's spouse, dated January 15; a letter from the applicant's spouse, dated June 24, 2005; a psychological evaluation for the applicant's spouse, dated November 19, 2002; copies of photographs of the applicant with his family; a statement documenting the applicant's spouse taking leave without pay; letters from the applicant's father-in-law, the applicant's spouse's stepmother, the applicant's sister-in-law, the applicant's son, the applicant's daughter, and the applicant's former spouse; FBI and court records; education progress report, dated December 31, 1992; Certificate of Completion, Vocational Education, dated May 18, 1993; Letter from [REDACTED] Catholic Chaplain, California Correctional Center, dated May 21, 1993; tax statements for the applicant and his spouse; Medical discharge summary [REDACTED] San Bernadino County Medical Center, dated December 8, 1997; Medical discharge summary [REDACTED] St. Bernadine Medical Center, dated May 17, 1998; a medical prescription note, written by [REDACTED] November 7, 2002; and a letter from [REDACTED] dated June 27, 2005. The entire record was considered in rendering a decision on the appeal.

The record reflects that on September 20, 1991 the applicant was convicted of Assault with a Deadly Weapon under section 245(a)(1) and Residential Burglary – 1st Degree under section 459 of the California Penal Code. *Abstract of Judgment, Superior Court of California, dated September 26, 1991.* The applicant's two convictions originate from the same incident. *See criminal counts, Superior Court of the State of California, dated August 15, 1991.* The applicant was sentenced to five years imprisonment. *Abstract of Judgment, Superior Court of California, dated September 26, 1991; See Also Minute Order, Superior Court of the State of California for the County of Orange, September 20, 1991.*

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 applicant's conviction under section 245(a) of the California Penal Code for committing an assault with a deadly weapon is a crime involving moral turpitude. See *Matter of Logan*, 17 I&N Dec. 367 (BIA 1980). The applicant's conviction under section 459 of the California Penal Code for residential burglary in the 1st degree is also a crime involving moral turpitude. See *Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982) noting that burglary with intent to commit theft is a crime involving moral turpitude. The AAO finds that the applicant's convictions of crimes involving moral turpitude render him inadmissible under 212(a)(2)(A)(i)(I) of the Act.

The AAO notes that the commission of both of the applicant's criminal convictions occurred on or about July 30, 1991. See *criminal counts, Superior Court of the State of California, dated August 15, 1991*. Although not addressed by the District Director, the activities for which the applicant is inadmissible occurred more than 15 years ago. As such, he is eligible for consideration of a waiver under section 212(h)(1)(A). To qualify for a waiver, the applicant needs to show that his admission would not be contrary to the national welfare, safety or security of the United States and that he has been rehabilitated.

The record reflects that the applicant has not been charged with any additional crimes since his conviction in 1991. *FBI criminal record printout dated August 16, 2001; See Also court record check, Superior Court of the*

State of California, dated September 7, 2001. As such, the record establishes that the admission of the applicant to the United States would not be “contrary to the national welfare, safety, or security of the United States.”

The applicant has demonstrated that he has been rehabilitated. While in prison, the applicant successfully completed an auto body course. *Certificate of Completion, Vocational Education, dated May 18, 1993.* From July 1992 to January 1993, the applicant devoted himself to the operation and condition of the prison chapel while volunteering his services to the religious program. *Letter from [REDACTED] Catholic Chaplain, California Correctional Center, dated May 21, 1993.* He is married to a U.S. citizen and has a lawful permanent resident daughter. *Marriage certificate, dated January 31, 1998; Letter from the applicant's daughter stating she is a lawful permanent resident, dated June 24, 2005.* The AAO notes that in 1997 the applicant was diagnosed as having pancreatitis with pseudocyst, gastrointestinal bleed, adult respiratory distress syndrome, sepsis, and hepatic encephalopathy, and he subsequently fell into a coma for over two months. *Medical discharge summary, [REDACTED] San Bernadino County Medical Center, dated December 8, 1997.* In 1998 the applicant suffered from an infected pancreatic pseudocyst. *Medical discharge summary, [REDACTED] St. Bernadine Medical Center, dated May 17, 1998.* After the applicant recovered from his health ailments, he began to work as a self-employed/auto body repairman, and he continues to earn \$1200 to \$1500 a month in this position. *Form G-325A noting the applicant's self-employment and unemployment due to a medical disability; Attorney's brief, dated June 29, 2005.* The applicant and his spouse have an agreement that while she earns the higher income, the applicant takes care of the household chores, cooking, and paying the bills. *Letter from the applicant's spouse, dated June 24, 2005.* The applicant has paid joint taxes with his spouse. *Tax statements for the applicant and his spouse.* The applicant helps to financially support his sister in Mexico and her husband who is unable to work due to having lost one leg to cancer. *Letter from the applicant's son, dated June 24, 2005.* The applicant also has numerous letters of support attesting to his rehabilitation. *See letter from the applicant's son, dated June 24, 2005; letter from the applicant's daughter, dated June 24, 2005; letter from the applicant's former spouse, dated June 27, 2005; letter from the applicant's current spouse, dated June 24, 2005; letter from the applicant's father-in-law, undated; letter from the applicant's spouse's stepmother, undated; and a letter from the applicant's sister-in-law, undated.*

The only unfavorable factors presented in the application are the applicant's convictions for Assault with a Deadly Weapon and Residential Burglary – 1st Degree in September 1991. The favorable factors presented in the application include that the applicant has not been charged with a crime since his conviction and the applicant's crime occurred more than 15 years ago. Additionally, the applicant has many family ties, a history of employment, proof of paying taxes, and numerous letters of support.

The AAO finds that these favorable factors outweigh the unfavorable factors of two criminal convictions resulting from the same incident in 1991. The AAO therefore finds that the applicant qualifies for a 212(h) waiver for being inadmissible pursuant to 212(a)(2)(A)(i)(I) 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.