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U.S. Citizenship
and Immigration
Services

H2

[Redacted]

FILE:

Office: LOS ANGELES

Date: SEP 21 2006

IN RE:

[Redacted]

APPLICATION: 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 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, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Los Angeles, California, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application will be approved.

The applicant is a native and citizen of El Salvador who 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 a crime involving moral turpitude. The applicant is the spouse of a U.S. citizen, child of U.S. citizen mother, father of a U.S. citizen son and stepfather of a U.S. citizen daughter. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his spouse, mother and 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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated February 17, 2005.

The record reflects that, in 1984, the applicant entered the United States without inspection with his other family members. On May 5, 1989, the applicant was convicted of felony grand theft auto in violation of section 487.3 of the California Penal Code (CPC). The applicant was sentenced to 36 months of probation and 90 days in jail, which was suspended in favor of three years of probation. On September 19, 1990, the applicant was arrested for receiving stolen property in violation of section 496.1 of the CPC and his probation was revoked. On October 22, 1990, the applicant was sentenced to two years in jail for his grand theft auto conviction. On September 7, 1991, the applicant was paroled and served the remainder of his sentence on probation.

On April 18, 1992, the applicant returned to El Salvador to attend his immigrant visa interview after the Petition for Alien Relative (Form I-130) the applicant's mother filed on his behalf was approved. The applicant was refused an immigrant visa because of his conviction. The applicant remained in El Salvador and attempted to build a life in El Salvador. On January 5, 1995, the applicant returned to the United States without inspection. On June 22, 1995, the applicant married his U.S. citizen spouse who has a U.S. citizen daughter from a prior relationship. On October 25, 1995, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse. On June 1, 1996, the applicant's U.S. citizen son was born. On February 13, 1997, the Form I-130 was approved. On February 13, 1997, the applicant filed the Form I-601.

On appeal, counsel asserts that the district director erred in finding that the applicant's wife, mother and children would not experience extreme hardship if the applicant were to be removed to El Salvador. *See Applicant's Brief* dated March 16, 2005. In support of the appeal, counsel submitted the above-referenced brief and copies of documentation previously provided. The entire record was reviewed and 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 . . . 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 district director based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's admission to and conviction for felony grand theft auto, a crime involving moral turpitude. Counsel does not contest the district director's determination of inadmissibility.

The record reflects that, on March 9, 1989, the applicant pled guilty to reckless driving in violation of section 23103 of the California Vehicular Code and was sentenced to 90 days in jail, which was suspended in favor of 36 months of probation. The record reflects that the applicant completed his probation and paid restitution in regard to his criminal convictions and he has not been arrested for or convicted of a crime since 1990. The applicant's mother is a naturalized U.S. citizen, to whom the applicant and his wife provide financial support and physical assistance. The record reflects further that the applicant has been steadily employed and pays federal taxes.

The record reflects that the applicant applied for adjustment of status on October 25, 1995. 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). No final decision has been made on the applicant's Form I-485, so the applicant, is still seeking admission by virtue of adjustment of status. 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 adjustment of status.

The AAO finds that the district director erred in basing his decision on section 212(h)(1)(B) of the Act and failed to consider the eligibility of the applicant for a waiver under section 212(h)(1)(A). The record reflects that the applicant has not been convicted of any crimes involving moral turpitude since his conviction for grand theft auto in 1989. There is nothing in the record to establish that the admission of the applicant to the United States would be "contrary to the national welfare, safety, or security of the United States." In addition, the AAO notes that the applicant has not been charged with a crime since 1990 and the applicant's crime involving moral turpitude occurred more than 15 years ago. As evidenced by letters from his employers, he has been steadily employed and has been an exemplary employee since he returned to the United States in 1995, he has paid taxes during this employment and is settled in the community and provides emotional and financial support to family members in the United States, demonstrating the applicant's rehabilitation. The record reflects that the applicant meets the requirements for a waiver of inadmissibility under section 212(h)(1)(A) of the Act.

Further, the AAO notes that, even though the applicant's family would not suffer *extreme* hardship, they would suffer emotional and financial hardship as a result of their separation from the applicant. The applicant continues to contribute approximately \$20,700 to the household income. The applicant not only provides physical assistance to his mother, but the applicant's contributions to the household allow the applicant and his wife to provide financial assistance to his mother. It would be an emotional hardship for the applicant's spouse, mother and children to be separated from him if the applicant were removed from the United States. Additionally, it would be a hardship for the applicant's wife, mother and children to accompany the applicant to El Salvador because they would face adjustment to a lower standard of living, separation from friends and family, and for the applicant's spouse and children, a new culture and language

The unfavorable factors presented in the application are the applicant's convictions for reckless driving and grand theft auto in 1989 and arrest for receiving stolen property in 1990. The favorable factors include numerous family ties to the U.S., including a U.S. citizen mother, a U.S. citizen son, a U.S. citizen stepdaughter and a U.S. citizen spouse to whom he has been married for over eleven years. Other favorable factors include all those related to his rehabilitation listed above.

The applicant has 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 now met that burden.** Accordingly, the appeal will be sustained.

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