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U.S. Citizenship  
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Services

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FILE:



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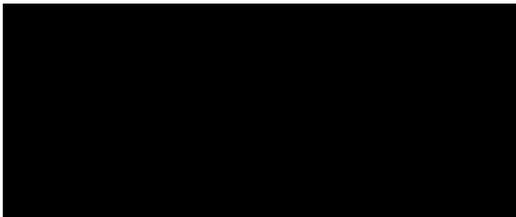
Date: DEC 13 2007

IN RE:



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:



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 Acting District Director for Services, Baltimore, Maryland, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be sustained and the application approved

The applicant [REDACTED] is a native and citizen of El Salvador who was found 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 committing a crime of moral turpitude. The applicant, who is married to a lawful permanent resident and is the father of U.S. citizen child, seeks a waiver of inadmissibility under section 212(h) of the Act. In denying the waiver application, the Acting District Director for Services found that the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the Acting District Director of Services*, dated April 9, 2003.<sup>1</sup>

The AAO will first address the finding of inadmissibility.

Section 212(a)(2) of the Act states that:

(A)(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 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines "conviction" for immigration purposes as:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where -

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

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 -

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<sup>1</sup> The District Director also found the applicant ineligible because the crime he was convicted of is an aggravated felony. Inadmissibility under section 212(a)(2) (A)(i) of the Act only involves whether the activity was a crime of moral turpitude, whether it was an aggravated felony is irrelevant in these proceedings.

- (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 the applicant was convicted of unlawful wounding on May 8, 1992, and sentenced to five years prison and one year suspension of prison and two years probation. *Arlington Police Department, Arlington, Virginia.*

Section 212(h) of the Act provides that the Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I) of subsection (a)(2) if 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. The record conveys that the activity for which the applicant was arrested and ultimately convicted occurred in September 1991. An application for admission or adjustment of status is a continuing application adjudicated on the basis of the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992). Since the appeal of [redacted] waiver application is considered part of a continuing application for admission, the criminal activity for which the applicant was found inadmissible occurred more than 15 years ago and he is therefore eligible for consideration under section 212(h)(1) of the Act.

Under section 212(h)(1)(A)(ii) of the Act, the applicant's admission to the United States must not be contrary to the national welfare, safety, or security of the United States and the applicant must establish that he or she has been rehabilitated. The record reflects that the applicant was convicted of and completed the sentence for the unlawful wounding charge. The AAO notes that the record suggests that the applicant has not been charged with any additional crimes since his conviction, which occurred 15 years ago. The Biographic Information, form G-325A shows that the applicant has been gainfully employed, working as a waiter with various restaurants since March 1994. He has paid taxes, as shown by the submitted income tax records. The applicant and his wife bought a house. *Purchase Money Deed of Trust, entered into on June 29, 1999.* The applicant actively cares for his daughter, as described in the submitted psychological evaluation performed by [redacted], a licensed clinical psychologist. The record therefore indicates that the applicant's admission to the United States is not contrary to the national welfare, safety, or security of the United States.

The record reflects that the applicant completed the sentence imposed. He has not been charged with any additional crimes since his 1992 conviction. The AAO therefore finds that the record indicates that the applicant has been rehabilitated, as required by section 212(h)(1)(A)(ii) of the Act

The favorable factors are the applicant's U.S. citizen child, his steady work history and his payment of taxes. The negative factors in the case are the applicant's initial entry without inspection and his unlawful wounding conviction. While the AAO does not condone the applicant's actions, the AAO finds that the favorable factors here 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 met that burden. Accordingly, the appeal will be sustained.

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