



U.S. Citizenship
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FILE: [REDACTED]

Office: PHOENIX (RENO, NEVADA)

Date: **JUL 10 2007**

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.

Robert P. Wiemann

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona, 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 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 crimes involving moral turpitude. The applicant's mother is a lawful permanent resident and his stepfather is a U.S. citizen. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his mother and stepfather.

The record shows that the applicant has testified that he has lived in the United States since July 1991 (when he was brought here as a minor by his parents) and that he last entered the United States without inspection on August 6, 1998. See *Form G-325A*, dated December 26, 2000; *Form I-485*, dated December 26, 2000. The applicant filed a Petition for Amerasian, Widow or Special Immigrant (Form I-360) as the self-petitioning child of an abusive U.S. citizen or lawful permanent resident in March 2000. The petition was approved on September 13, 2000. On October 5, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On February 12, 2002, the applicant was issued a request for further evidence requesting that he submit an Application for Waiver of Grounds of Inadmissibility (Form I-601). The applicant filed Form I-601 on February 15, 2002.

In a decision to deny the applicant's waiver application issued March 22 2002, the director stated that the applicant is inadmissible to the United States because he has been convicted of two counts of Concealing or Destroying Evidence of the Commission of a Felony, crimes involving moral turpitude. The director concluded that the applicant had not established that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, counsel asserts that the applicant "stands by the documents submitted" and believes the director erred in denying his waiver application. *Form I-290-B, question 3.*

Court documents in the record reflect that the applicant was convicted on January 28, 2002 in the Fourth Judicial District of the State of Nevada, County of Elko of two gross misdemeanor counts of Concealing or Destroying Evidence of the Commission of a Felony in violation of Nevada Revised Statutes §§ 205.760 and 199.220 and sentenced to six months imprisonment on each count. The sentences were suspended and the applicant was placed on probation for a term of 24 months. A police report and written statement by the applicant in the record indicate that the convictions were based on the applicant purchasing goods using other people's credit card numbers obtained from receipts the applicant took from a pawn shop trash can.

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)(C) the alien qualifies for classification under clause (iii) or (iv) of section 204(a)(1)(A) or classification under clause (ii) or (iii) of section 204(a)(1)(B); and

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may be regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status. . . .

Section 204(a)(1)(B) of the Act provides, in pertinent part:

(iii) An alien who is the child of an alien lawfully admitted for permanent residence or who was the child of a lawful permanent resident who within the past 2 years lost lawful permanent resident status due to an incident of domestic violence, and who is a person of good moral character, who is eligible for classification under section 203(a)(2)(A), and who resides, or has resided in the past, with the alien's permanent resident alien parent may file a petition with the Attorney General [Secretary] under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General [Secretary] that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's permanent resident parent.

The applicant filed his approved Petition for Amerasian, Widow or Special Immigrant (Form I-360) under the category of Self-Petitioning Child of Abusive U.S. Citizen or Lawful Permanent Resident and meets the requirements of Section 204(a)(1)(B)(iii). Therefore, the applicant is not required to establish extreme hardship to a qualifying relative to be eligible for a waiver of inadmissibility under section 212(h) of the Act. The director's finding that the applicant was required (and failed) to show that the bar to admission would cause extreme hardship to the applicant's mother is withdrawn.

The AAO finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began

residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors in this case are the applicant's criminal convictions and his violation of the immigration laws by entering and remaining in the United States without inspection. The favorable considerations include the applicant's family ties in the United States; the applicant's residence in the United States since a young age; the applicant's exemplary educational and extracurricular record, the applicant's service to the community in the form of participation in a political campaign; the absence of additional convictions following the applicant's conviction in 2001; and affidavits from family, friends and other responsible members of the applicant's community attesting to his good character.

Although the crimes committed by the applicant are serious in nature and cannot be condoned, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.