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U.S. Citizenship
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FILE:

Office: LOS ANGELES, CA
RELATES)

Date: MAY 29 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 waiver application was denied by the Interim District Director, Los Angeles, California and the Administrative Appeals Office (AAO) sustained a subsequent appeal, remanding the matter for further consideration. The district director issued a new decision and certified that decision to the AAO. The decision will be withdrawn and the application will be approved.

The record reflects that the applicant is a native and citizen of the Philippines 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 record indicates that the applicant has eight children. Two of her children are U.S. citizens and four are lawful permanent residents. The applicant seeks a waiver of inadmissibility in order to reside with her children in the United States.

The district director found that there was no evidence in the record to support a finding that the applicant's children would experience extreme hardship upon her removal. The application was denied accordingly. *District Director Decision*, dated March 16, 2005.

On appeal, counsel asserts that the applicant's removal from the United States will cause her family extreme hardship. *Counsel's Brief*, dated May 13, 2005.

The record indicates that the applicant was convicted of one count of Conspiracy to File False Statements to the Immigration and Naturalization Service in violation of Title 18 U.S.C. 371 and four counts of Fraud and Misuse of Entry Visas, Aiding and Abetting in violation of Title 18 U.S.C. 1546, 2(a) on December 18, 1992. She was sentenced to 31 months for each of the five counts, to be served concurrently, followed by three years of supervised release. The applicant was discharged from supervised release on October 29, 1996.

Section 212(a)(2) of the Act states in pertinent part, that:

A) Conviction of certain crimes.-

(i) In general.-Except as provided in clause (ii), any 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), ...

B) Multiple criminal convictions.-Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

Section 212(h) states in pertinent part that:

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (B) . . . if-

(1)(A) [I]t is established to the satisfaction of the Attorney General that-

(i) [T]he 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 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 activities leading up to the applicant's convictions occurred during the time period of April 1990 to April 1991. Therefore, the crimes involving moral turpitude for which the applicant was found inadmissible occurred more than 15 years from the present time. 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). There has been no final decision made on the applicant's I-485 application, so the applicant, as of today, is still seeking admission to the United States. Thus, the applicant is statutorily eligible for a waiver pursuant to section 212(h)(1)(A) of the Act.

The record reflects that the applicant has not been charged with any additional crimes since her convictions in 1992. The record does not 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."

Further, the AAO notes that the record indicates that the applicant's family would suffer emotional hardship as a result of their separation from the applicant. The record shows that the applicant has six children permanently residing in the United States. The applicant is also married, although the record does not indicate the immigration status of her spouse. All six children and her spouse submitted affidavits stating that they have a strong relationship with the applicant and that they rely on her for emotional support and at times financial support. The record also shows that the applicant's spouse is suffering from potentially serious health problems and he states that he needs the applicant to take care of him. *See Affidavit of [REDACTED]* dated May 12, 2005 and *Letter from [REDACTED]* dated April 12, 2005. Documentation related to the applicant's incarceration indicates that at the time of her release from prison, the applicant had completed the requirements for a high school diploma or its equivalent, had a clear conduct report throughout her 31 month sentence, and was found to be fully employable. *Federal Bureau of Prisons (FBP) Progress Report*, dated March 2, 1994. The record also establishes that the applicant complied with the rules and regulations of her supervised release. *Court Order, U.S. District court for the Central District of California*. The AAO finds that the applicant has been rehabilitated in that she used her time in prison to acquire an education, has

sentence, and was found to be fully employable. *Federal Bureau of Prisons (FBP) Progress Report*, dated March 2, 1994. The record also establishes that the applicant complied with the rules and regulations of her supervised release. *Court Order, U.S. District court for the Central District of California*. The AAO finds that the applicant has been rehabilitated in that she used her time in prison to acquire an education, has no further criminal record, and is a loving and supportive mother to her six children living in the United States. Therefore, she meets the requirements for waiver of inadmissibility under section 212(h)(1)(A) of the Act.

The only unfavorable factor presented in the application is the applicant's criminal record from December 1992. The AAO notes that the FBP progress report provided a positive evaluation of the applicant, the applicant has not been charged with a crime since her convictions in 1992, her crimes occurred more than 15 years ago, and she has been a loving and supportive mother to her children throughout this time period. Accordingly, the AAO finds the favorable factors in the applicant's application to outweigh the unfavorable factors.

In discretionary matters, the applicant bears the full burden of proving her 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 district director's decision will be withdrawn.

ORDER: The district director's decision is withdrawn. The application is approved.