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U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: CHICAGO, IL

Date: SEP 07 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:

SELF-REPRESENTED

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, Chicago, Illinois, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be sustained.

The applicant [REDACTED] is a native and citizen of Poland 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 U.S. citizen and is the father of U.S. citizen children, seeks a waiver of inadmissibility under section 212(h) of the Act. The district director concluded that the applicant failed to establish extreme hardship would be imposed on a qualifying relative, and denied the Application for Waiver of Excludability (Form I-601). *Decision of the District Director*, dated July 14, 2005.

On appeal, the applicant states that he was found not guilty of the alleged crime and therefore has not been “convicted” for purposes of immigration law. He asserts that his family would endure extreme hardship if he is removed from the United States.

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 –

- (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 in 1987 the applicant was charged with attempted murder, aggravated battery (38-12-4-B(1)), aggravated battery (38 12-4A), unlawful restraint (38-10-3-A), and armed violence (38-33A-2/I). It further appears to indicate that the applicant was ultimately found not guilty of these crimes. *Certified record of the Clerk of the Circuit Court of Cook County, dated January 23, 2003.*

However, even if the applicant had been found guilty, his conviction occurred on October 9, 1987, and the denial of his waiver application occurred on July 14, 2005. The appeal of the denial of the waiver application is a continuing application for which admissibility will be determined at the time the application is finally considered. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992). Thus, the criminal conviction for which the applicant is inadmissible occurred more than 15 years before the date of his application for admission.

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 applicant's admission to the United States must not be contrary to the national welfare, safety, or security of the United States. Section 212(h)(1)(A)(ii) of the Act. The applicant must establish that he or she has been rehabilitated. Section 212(h)(1)(A)(ii) of the Act.

The AAO notes that the applicant has not been charged with any additional crimes since 1987, which occurred 19 years ago. The record shows that the applicant has been gainfully employed since 2000. He was employed with Wisconsin Tool and Stamping Company in 2000, and with Four Star Tool, Inc. in 2002. *W-2 Form*. He was employed with AMTEC Precision Products, Inc. as of November 2002 as a quality supervisor, earning \$71,500 annually. *Letter from Human Resources Administrator, dated January 7, 2003*. The applicant and his wife are paying a monthly mortgage for a house. *Allstate Evidence of Insurance, dated October 22, 2002*. 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 applicant has not been charged with any additional crimes since 1987. 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 applicant has established that the favorable factors in his application outweigh the unfavorable factors. The favorable factors are the applicant's steady work history, his payment of taxes, and his positive employment letter. The AAO notes that the applicant has a son and his wife is expecting another child. The

negative factor in the case is the applicant's felony aggravated battery conviction. The AAO finds that the favorable factors here outweigh the unfavorable factors. The district director's denial of the I-601 application was thus improper.

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.