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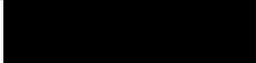
U.S. Citizenship
and Immigration
Services

#2

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FILE:



Office: LOS ANGELES, CA

Date: APR 09 2008

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:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Los Angeles, California, 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 Mexico 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). The applicant sought a waiver of inadmissibility under section 212(h) of the Act, which the district director denied, concluding that the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the District Director*, dated December 20, 2005.

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 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 stated that the applicant was convicted of the following in 1992:

- Taking a Vehicle Without the Owner's Consent (section 10851(A) of the Vehicle Code); Tampering with A Vehicle (section 10852 of the Vehicle Code); Possession of Burglary Tools (section 466 of the Penal Code)

The district director indicated that the applicant was arrested on October 12, 2000 for Vehicle Theft and Violation of the Work Release Program, and that on December 6, 2005, the applicant failed to provide the requested the related court documents for this arrest and any subsequent arrests.

Because the district director found the applicant's convictions involved crimes of moral turpitude, the applicant was deemed inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I).

The AAO will first address the finding of inadmissibility.

The record contains an additional document submitted on appeal. It is a court document from the Municipal Court of Criminal Justice, County of Los Angeles, State of California, relating to the case filed on October 21, 1992. It states that the defendant was charged with having committed on or about August 18, 1992 in the County of Los Angeles, the offense of Violate Promise to Appear, 4024.2(B) Penal Code, a misdemeanor, and that an arrest warrant was issued. It shows the defendant as pleading *nolo contendere* to the offense on November 21, 2000.

A conviction for Violate Promise to Appear would not qualify as a crime of moral turpitude. In *In re Fualaau*, 21 I&N Dec. 475, 477 (BIA 1996), the Board of Immigration Appeals (BIA) states:

Moral turpitude refers generally to conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general. Moral turpitude has been defined as an act which is per se morally reprehensible and intrinsically wrong, or malum in se, so it is the nature of the act itself and not the statutory prohibition of it which renders a crime one of moral turpitude.

The applicant was convicted for violating a promise to appear for work or assigned activity for a work release program. The AAO finds that the applicant's conduct, in violating the promise to appear, would not constitute a crime of moral turpitude as defined in *In re Fualaau* for his conduct did not cause any harm or injury to another.

On March 28, 1992 the applicant was convicted of crimes involving moral turpitude: Taking a Vehicle Without the Owner's Consent and Tampering with Vehicle. See, e.g., *U.S. v. Esparza-Ponce*, 193 F.3d 1133, 1135-37 (9th Cir. 1999) (petty theft under California law involves moral turpitude).

With regard to the conviction for possession of burglary tools, in *Matter of S*, 6 I&N Dec. 769 (BIA 1955), the BIA states that “unless the record of conviction affirmatively shows that the particular crime the alien intended to commit with the burglary tools found in his possession involves moral turpitude,” *Id.* at 770, “[w]e may not go behind the record of conviction and inquire into the circumstances, whether they be favorable or unfavorable, under which the crime in fact was committed, citing *United States ex rel. Robinson v. Day*, 51 F. (2d) 1022 (C.C.A. 2, 1931). *Id.*

Here, the record establishes that the 1992 conviction for possession of burglary tools is directly related to the convictions of Taking a Vehicle Without the Owner’s Consent and Tampering with Vehicle, which are crimes involving moral turpitude. Accordingly, the AAO finds that the applicant’s conviction for the crime of possession of burglary tools is a crime involving moral turpitude.

For a waiver under section 212(h)(1)(A) of the Act, a person needs to establish that the activities for which he or she is inadmissible occurred more than 15 years before the date of his or her application for a visa, admission, or adjustment of status. In the context of an adjustment application, such as the situation presented here, the BIA has held that adjustment is an admission. In *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992), the BIA states that an application for admission to the United States is a continuing application, and admissibility is determined on the basis of the facts and the law at the time the application is finally adjudicated.

The district director denied the waiver application in 2005, and the applicant is appealing that decision. The activities for which the applicant is inadmissible, the convictions for Taking a Vehicle Without the Owner’s Consent, Tampering with Vehicle, and Possession of Burglary Tools, occurred in 1991, which is more than 15 years prior to the applicant’s application for a visa, admission, or adjustment of status, as required by the Act.

Section 212(h)(1)(A)(ii) of the Act requires that the applicant’s admission to the United States not be contrary to the national welfare, safety, or security of the United States.

The record contains letters from the applicant’s wife and employers, which attest to his good character. The record indicates that the applicant has an eight-year-old son. In a letter, the applicant’s wife states that they have refinanced their house and that the applicant has a steady income. The record contains a mortgage invoice and income tax records and W-2 Forms, reflecting the applicant’s employment and payment of taxes in 1997 and 1998. The record does not indicate any additional crimes other than those listed in this decision.

Based on the documentation in the record, the AAO finds that the applicant’s admission to the United States is not contrary to the national welfare, safety, or security of the United States.

Section 212(h)(1)(A)(ii) of the Act requires that the applicant establish that he has been rehabilitated. The record reflects that the applicant completed the sentences imposed for the convictions and it does not indicate any additional crimes have been committed since the prior convictions. The AAO finds the record conveys that the applicant has been rehabilitated.

The applicant has established that the favorable factors in the application outweigh the unfavorable factors. The applicant has an approved Form I-130. The record reflects that he has a steady work history, pays taxes,

owns a home, and financially supports his family. The record contains positive letters of recommendation about the applicant. The negative factors in the case are the applicant's convictions, his entry without inspection in the United States, and his periods of unauthorized presence. The AAO finds that the favorable factors 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.