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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

H2

**PUBLIC COPY**

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 26 2008**

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director of the California Service Center 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 is a native and citizen of Cuba who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i), for having committed a crime involving moral turpitude. The Form I-485, Application to Register Permanent Resident or Adjust Status, indicates that the applicant is applying for adjustment to permanent resident status under Section 1 of the Cuban Adjustment Act (CAA). The applicant sought a waiver of inadmissibility under section 212(h) of the Act, which the director denied, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the Director*, dated April 20, 2006.

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 –

- (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 here shows that on August 29, 1989 at 8:27 a.m., the applicant committed the crime of Burglary of an Occupied Dwelling with an Assault and/or Battery therein in violation of 810.02(3) of the Florida Statutes. She pled *nolo contendere* to the charge; the court found her guilty, withheld adjudication, and sentenced her to four days time served. On the same date, August 29, 1989, at 8:35 a.m., the applicant committed the crime of Burglary of an Occupied Dwelling with an Assault and/or Battery therein in violation of 810.02(3) of the Florida Statutes. She pled *nolo contendere* to the charge; the court found her guilty, withheld adjudication, and sentenced her to four days time served. *In the Criminal Division of the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, Order Withholding Adjudication and Imposing Credit for time Served and Costs.*

In the denial letter, the director stated that the applicant is eligible for a waiver under section 212(h)(1)(A) of the Act, as her crimes occurred more than 15 years prior to her filing for adjustment of status. However, the director determined that the applicant failed to establish rehabilitation, as required by the Act. He stated that the applicant's graduating from a university, marriage, starting a business, and raising two children do not establish rehabilitation because these events "merely established that the applicant pursued a normal life without serious inadmissibility incidents for the past 16 years."

On appeal, counsel does not dispute the director's finding of inadmissibility based on the applicant's conviction of a crime of moral turpitude; however, counsel indicates that the applicant "requires a waiver for one offense which occurred in August of 1989." Counsel states that the applicant is a teacher and director of a Montessori School that she founded in Miami Beach, Florida. She states that the applicant is married to a U.S. citizen, and has a two-year-old son and an eight-year-old daughter who attend Montessori School, and a U.S. citizen mother, with whom she has a close relationship. Counsel states that the applicant requires a waiver for her one offense, burglary of an occupied dwelling, which occurred in August of 1989. Counsel indicates that the applicant was 20 years old when she committed the crime and is now 38 years old. Counsel states that Cuba is under the control of a communist dictator and she submits information on Cuba by the U.S. Department of State. Counsel contends that the applicant is eligible for a waiver under section 212(h)(1)(A) of the Act, because the activities for which she is inadmissible occurred more than 15 years before the date of her application for adjustment of status, and she has established rehabilitation, which must be established according to section 212(h)(1)(A)(iii) of the Act. Counsel states that rehabilitation has been shown: the applicant is the owner and director of a Montessori School founded over five years ago, she is raising two children, she owns property in Miami Beach, and she has not engaged in any criminal conduct or conduct evincing a lack of good moral character. Counsel contends that the applicant has shown remorse by acknowledging the offense and her inadmissibility with the initial filing. Counsel states that the no case law or other legal authority has been cited in the denial letter to establish that rehabilitation signifies more than a

clean record for a significant length of time. Counsel also describes the hardship the applicant's family would experience if the waiver application were denied.

The AAO disagrees with counsel's assertion that the applicant committed one offense in August 1989, as the record is clear that she committed two crimes involving moral turpitude on August 29, 1989. Nevertheless, section 212(h) of the Act provides that the Secretary 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. Since the criminal activities for which the applicant was found inadmissible occurred more than 15 years prior to her adjustment application, they are waivable 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 established a Montessori School in Florida in 1999. *State of Florida, Department of State Certification*. She was awarded an Associate Infant and Toddler Credential in June 2001. *American Montessori Society Award*. The applicant was issued a Certificate of Use/Occupation for a private school, schools, day care, nurse. *City of Miami Beach Certificate of Use, Annual Fire Fee, and Occupational License, beginning October 1, 2003 to September 30, 2004*. The applicant's children are four and ten years old. *State of Florida Certificate of Birth*. The applicant married on December 24, 2003 in Miami Beach, Florida. *State of Florida Marriage Record*. The record suggests that the applicant has not been charged with any additional crimes since her convictions in 1989. 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, and furthermore, her stable family life, established business and lack of further criminal activities establish that she has been rehabilitated, as required by section 212(h)(1)(A)(ii) of the Act. The director therefore erred by concluding that the applicant has not rehabilitated.

The applicant has established that the favorable factors in his application outweigh the unfavorable factors. The favorable factors are the applicant's family ties to her U.S. citizen spouse and children, and her lawful permanent resident mother, hardship they would experience if she were removed, her founding and operation of a Montessori School, and no criminal record since 1989. The negative factors are the applicant's convictions in the State of Florida. Though the AAO does not condone her criminal activities, the AAO finds that the favorable factors 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.