

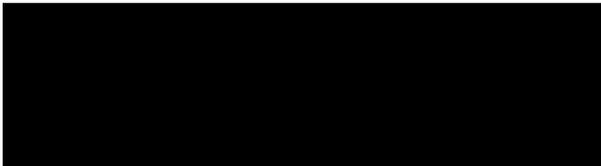
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U.S. Department of Homeland Security
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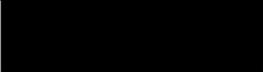
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CHICAGO, IL

Date: DEC 05 2008

IN RE:



PETITION: 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 PETITIONER:



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 cursive script, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois 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 under 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 a crime involving moral turpitude. The applicant is the spouse of a naturalized citizen of the United States, the son of a lawful permanent resident, and the father of four United States citizen children and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his spouse, father and children.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 14, 2005.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of law in finding that the applicant had failed to establish extreme hardship to his qualifying relative, as necessary for a waiver under 212(h) of the Act. *Form I-290B; Attorney's brief*.

In support of his assertions, counsel submits a brief. The record also includes, but is not limited to, a statement from the applicant's spouse; statements from the applicant's children; a statement from the applicant's father; a statement from the applicant's mother-in-law; a statement concerning the health of the applicant's mother-in-law from [REDACTED], dated October 17, 2001; a letter from [REDACTED], related to the health of the applicant's father, dated November 2, 2005; medical prescriptions for the applicant's father and mother-in-law; employment letters for the applicant and his spouse; a mortgage statement; bills; tax statements for the applicant and his spouse; W-2 Forms for the applicant and his spouse; police department and court records for the applicant; a letter from a friend; and academic report cards for the applicant's children. The entire record was considered in rendering a decision on the appeal.

The record reflects that on December 9, 1988 the applicant was convicted of armed robbery, aggravated battery, and armed/viol. for which he received a sentence of six years. *Criminal record, Department of Police, Chicago, Illinois*. On December 15, 1988 the applicant was convicted of violating a bail bond for which he received a sentence of one year. *Criminal record, Department of Police, Chicago, Illinois; Certified Statement of Conviction/Disposition, Circuit Court of Cook County, Illinois*. Based on his December 9, 1988 conviction, the AAO finds the applicant to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude.

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) (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 AAO notes that the District Director erred in determining that the applicant needed to show extreme hardship to his qualifying relative in order to establish eligibility for a section 212(h) waiver. As just noted, in cases where the activities that render an applicant inadmissible occurred more than 15 years prior to the date of the applicant's application for a visa, admission or adjustment of status, an applicant may establish eligibility for a waiver by showing that he or she is not a national security risk and has been rehabilitated. The applicant in this matter has not been convicted of any criminal activity in 20 years. *Criminal records, Department of Police, Chicago, Illinois; Certified Statements of Conviction/Disposition, Circuit Court of Cook County, Illinois*. Therefore, he may establish eligibility for a waiver of his inadmissibility under section 212(a)(2)(i)(I) by satisfying the requirements of section 212(h)(1)(A) of the Act.

In order to be eligible for a section 212(h)(1)(A) waiver, the applicant must demonstrate that his admission to the United States would not be contrary to its national welfare, safety, or security and that he is rehabilitated. There is no indication in the record that the applicant has ever relied on the government for financial assistance or will rely on the government for financial assistance. Further, there is nothing in the record that points to the applicant's involvement in any activities that would undermine national safety or security. Although the applicant was convicted of violating a bail bond shortly after being convicted of armed robbery and aggravated violence in December 1988, he has not been convicted of any crime since that time. The record also shows a consistent work history with the same employer since 1991 and that the applicant is valued by his employer. The applicant has also purchased a home with his U.S. citizen spouse. Therefore, the AAO finds the record to demonstrate that

admitting the applicant to the United States would not be contrary to its national welfare, safety, or security and that the applicant is rehabilitated.

The granting of the waiver is discretionary in nature. The favorable discretionary factors for the applicant in this case include the applicant's naturalized U.S. citizen spouse, lawful permanent resident father, four U.S. citizen children, and lawful permanent resident mother-in-law. *See Naturalization Certificate; Permanent Resident Cards; United States birth certificates.* The applicant cares for his elderly father who suffers from several medical conditions. *Statement from the applicant's father; Medical letter for the applicant's father from [REDACTED]*, dated November 2, 2005. The applicant's four children attest to the positive role that the applicant has played in their lives. *Statements from the applicant's children*, dated November 9, 2005. The applicant has also paid taxes. *See letter of employment; Forms W-2; tax statements.* The AAO finds that these favorable factors outweigh the unfavorable factors of the applicant's prior criminal convictions, his entry into the United States without inspection, and periods of unauthorized presence in the United States and unauthorized employment. The AAO therefore finds that the applicant qualifies for a 212(h) waiver for being inadmissible pursuant to 212(a)(2)(A)(i)(I) of the Act.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden.

ORDER: The appeal is sustained.