

PUBLIC COPY



**U.S. Citizenship
and Immigration
Services**

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

H2

[Redacted]

FILE:

[Redacted]

Office: PHOENIX, AZ

Date:

JAN 02 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Phoenix, Arizona, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved.

The applicant, a citizen of Canada, was found 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 crimes involving moral turpitude. The applicant is the spouse of a U.S. citizen. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his spouse.

The acting district director determined that the applicant had established that extreme hardship would be imposed on a qualifying relative but denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) because the acting district director concluded that the applicant did not merit a favorable exercise of discretion. *Decision of the Acting District Director*, dated January 20, 2006.

In support of the appeal, counsel for the applicant submits a brief, dated March 21, 2006 and evidence of the applicant's and his spouse's property ownership. The entire record was reviewed and considered in rendering this decision.

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

(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 212(h) of the Act provides, in pertinent part:

(h) The Attorney General [now Secretary, Homeland Security, (Secretary)] may, in his discretion, waive the application of subparagraphs (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 . . .
- (2) The Attorney General (Secretary), in his discretion . . . has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

The AAO finds the analysis as to whether the applicant's qualifying relative would suffer extreme hardship if the applicant were removed to Canada unnecessary, as a waiver of inadmissibility is available to the applicant under section 212(h)(1)(A) of the Act. The applicant was convicted of a felony, Conspiracy to Defraud, under section 182.4 of the California Penal Code on August 15, 1988, based on incidents occurring on or about and between June 17, 1987 through August 31, 1987.¹ In addition, the applicant was convicted of Theft under \$1000 in September 1989 in Canada. Based on the record, the above-referenced crimes involving moral turpitude for which the applicant was found inadmissible occurred more than fifteen years ago. The record does not establish that the applicant's admission to the United States would be contrary to the national welfare, safety, or security of the United States. Moreover, the record indicates that the applicant has not been convicted of any crimes involving moral turpitude since 1989, which indicates rehabilitation.

To further support the applicant's rehabilitation, the applicant provides numerous letters from community members and business acquaintances. [REDACTED] former District Attorney for Clark County, Nevada and former Legal Advisor for the Las Vegas Metropolitan Police Department, states the following regarding the applicant:

I have known [REDACTED] [the applicant] for between 10 to 11 years. In my opinion, [REDACTED] has been a solid citizen and a person whom I feel I could put my trust in and would have nothing to worry about...

I am aware, because [REDACTED] told me, that years ago he had a problem in the State of California. I did not know of this until recently, however, feel that since that was taken care of properly and since he has not had any problems since said time, that he will in the future not have any further issues of that kind.

I am hereby recommending that he be allowed to remain in the United States and would appreciate anything that can be done for him to be allowed to stay.

Letter from [REDACTED] dated November 8, 2005.

¹ The record indicates that the applicant was sentenced to pay a restitution fine of \$100 and spend fifteen days in county jail. The applicant was also placed on probation for three years.

[REDACTED], affirms the above-referenced statements regarding the applicant's rehabilitation. As stated by [REDACTED]

[REDACTED] [the applicant] has been a client of my firm over the past three years. I have found [REDACTED] to be honest and ethical in all of the business operations that I have observed. I have found him to have a good and moral character and would not hesitate to offer my recommendation on his behalf.

Letter from [REDACTED] dated November 2, 2005.

[REDACTED] FMP, Executive Board Member, Arizona Licensed Beverage Association, echoes the sentiments referenced above:

I am writing in support of [REDACTED] [the applicant]. During our association these past several years, I have found [REDACTED] to be knowledgeable, trustworthy, and informative in his direction within the jewelry business. His character has been forthright in his evaluation of goods and services within the industry.

His knowledge and assistance has proven to be most valuable to my purchases in the past and I would not hesitate to use his professional consultation in these matters again if the opportunity arises.

Letter from [REDACTED] FMP, Executive Board Member, Arizona Licensed Beverage Association, dated October 26, 2005.

Counsel also provides a letter from the applicant's spouse, [REDACTED] who states that the applicant "...has been involved with my business for several years now and his performance has been exemplary..." Letter from [REDACTED] dated November 21, 2005. Finally, counsel provides a Certificate of Completion, awarded to the applicant on July 13, 1997, for completing a 16 hour alcohol program presented by Justice Services, Inc., based on a May 1997 conviction of Driving While Alcohol Impaired in the State of Arizona.²

The AAO notes that since 1989, the record is absent of any additional incidents involving crimes of moral turpitude with respect to the applicant. Thus, the applicant meets the requirements for a waiver of inadmissibility under section 212(h)(1)(A) of the Act. Further, the AAO notes that the applicant's spouse would suffer emotional, psychological, physical and financial hardship as a result of separation from the applicant. However, the grant or denial of the waiver does not turn only on the mere passage of fifteen years of time. It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in

² In *Matter of Torres-Varela*, 23 I&N Dec. 78 (BIA 2001), the Board of Immigration Appeals (BIA) held that a simple driving under the influence (DUI) conviction is not a crime involving moral turpitude unless the alien is convicted under a state statute that requires a culpable mental state. The DUI statute under which the applicant was convicted in 1997 contains no mental state or culpability provisions. See *Arizona Statute* § 28-692. The statute is therefore a simple DUI statute and not a crime involving moral turpitude.

terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the applicant's U.S. citizen spouse, the hardship that the qualifying relative would face if the applicant were not present in the United States, the applicant's gainful employment, property ownership, support letters from community members, business acquaintances and family on behalf of the applicant, community ties, certificate of completion awarded to the applicant for completing a 16 hour alcohol program presented by Justice Services, Inc, payment of taxes, the passage of more than 17 years since the violation that lead to the 1989 conviction for a crime involving a moral turpitude. The unfavorable factors in this matter include the applicant's criminal convictions and his unauthorized presence and employment in the United States.

The crimes committed by the applicant were serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved.