



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: MIAMI, FL

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Miami, Florida and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of Pakistan who was found to be 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 having been convicted of crimes involving moral turpitude (shoplifting and theft by deception). The record indicates that the applicant has a U.S. citizen spouse. The applicant seeks a waiver of inadmissibility in order to reside with his spouse in the United States.

The district director found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *District Director's Decision*, dated September 1, 2006.

On appeal, counsel asserts that the district director erred in finding that the hardships suffered by the applicant's spouse would not amount to extreme hardship. *Form I-290B*, received, September 29, 2006.

The record includes, but is not limited to, counsel's brief, psychological evaluations of the applicant and his spouse, the applicant's criminal records, a physician's letter for the applicant's spouse and country conditions information on Pakistan. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on February 12, 1992, the applicant pled guilty to theft by deception and shoplifting.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

- (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 [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 the date on which the activity resulting in the applicant's convictions occurred was November 19, 1991. The AAO notes that an application for admission or adjustment of status is a "continuing" application and that it is adjudicated based on the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). As a final decision has not been made on the instant waiver application case, the AAO considers the application for adjustment of status to be pending. Therefore, section 212(h)(1)(A) of the Act applies to the applicant as the crimes for which the applicant was found inadmissible occurred more than 15 years prior to the applicant's adjustment of status application.

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. The record reflects that the applicant and his spouse had a total income of \$160,967 in 2004. *Applicant's 2004 Joint Federal Tax Return*, at 1, undated. There is no indication that the applicant has ever relied on the government for financial assistance. The record reflects that the applicant was sentenced to 2 years probation, 30 days community service, \$700 in fines, \$100 in penalties and \$50.00 in court costs. *Letter from Vicinage Assistant Chief Probation Officer*, dated March 8, 2001. The applicant was discharged from probation early. *Id.* The record reflects that the applicant has not been charged with any additional crimes since his convictions in 1992. There is no indication that the applicant is involved with terrorist-related activities. Therefore, the record evidences that admitting the applicant to the United States would not be contrary to its national welfare, safety, or security and the applicant is rehabilitated.

The granting of the waiver is discretionary in nature. There are several favorable discretionary factors for the applicant. The applicant is married to a U.S. citizen, his spouse is experiencing hardship (although not to the level of extreme hardship), he has two U.S. citizen stepchildren, he has no criminal record in the last fifteen years, and he has paid taxes.

The unfavorable factors in the application include the applicant's convictions (including a disorderly persons conviction from February 12, 1992), unauthorized employment and unauthorized stay in the United States.

While the AAO does not condone the applicant's actions, based on a thorough review of the record, the AAO finds that the applicant has established that the favorable factors in his application 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.