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U.S. Citizenship
and Immigration
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: NOV 28 2008

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h)
of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)i

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Center Director, Vermont Service Center. 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 native and 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 multiple crimes involving moral turpitude. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with her U.S. citizen spouse.

The acting center director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application to Waive Exclusion Grounds (Form I-601) accordingly. *Decision of the Acting Center Director*, dated December 4, 2006.

In support of the appeal, the applicant submits a letter, dated December 18, 2006. 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.

Regarding the applicant's ground of inadmissibility, the record reflects the commission of multiple crimes involving moral turpitude. In June 1983, the applicant was convicted of theft over \$200, a violation of section 294(A) of the Canadian Criminal Code. She paid a fine and was placed on probation for 12 months. In February 1984, the applicant was convicted of theft under \$200, a violation of section 294(b) of the Canadian Criminal Code. She paid a fine and was placed on probation for one year. In February 1988, the applicant was convicted of theft under \$1000, a violation of section 294(b) of the Canadian Criminal Code. She paid a fine and was placed on probation for 12 months. The applicant is thus deemed to be inadmissible for having committed multiple crimes involving moral turpitude. As the crimes were committed after the applicant's eighteenth birthday, the acting center director correctly found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The AAO finds the analysis as to whether the applicant's qualifying relative would suffer extreme hardship if the applicant were unable to reside in the United States unnecessary, as a waiver of inadmissibility is available to the applicant under section 212(h)(1)(A) of the Act. The crimes involving moral turpitude for which the applicant was found inadmissible, as outlined above, 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 1988, over twenty years ago, which indicates rehabilitation.

The applicant's spouse further supports the applicant's request for an inadmissibility waiver and corroborates the applicant's rehabilitation. As he states,

We have been not only married but also partners in business for thirty-four years. Besides being a Registered Nurse, she [the applicant] also helps manage our farming business and has since 1971.

Together we own and operate a 5000 acre grain farm in Saskatchewan. We have built this business up from a 320-acre grain farm in 1971, to its present 5000-acre base complete with all the necessary equipment to operate this business. This has become a very successful operation with a market value of several million dollars

and no liabilities. This is a direct result of many years of hard work and dedication by both of us.

[the applicant] has been responsible for most of the day to day operations of this business over the past thirty-four years.... We are an inseparable team when it involves a joint business venture.

We are planning to move to Nevada or Arizona to semi retire and allow [redacted] to get some relief from the cold climate...as she has some issues with rheumatoid arthritis. As we are both workaholics and she is very good working with people, we are planning on going in to another business venture together such as owning and operating a Coffee-Internet Café....

Letter from [redacted] dated December 17, 2005.

[redacted] RN, the applicant's supervisor, states the following regarding the applicant:

I have had the pleasure of knowing and working with [redacted] [the applicant] for approximately eight years. As [redacted] supervisor, I greatly value her common sense approach. She has a way of making both co-workers and customers feel respected. [redacted] has always proven to be a very trustworthy and honest person. She shows the utmost respect for our customers, and is always compassionate and caring when dealing with customers and co-workers.

work ethics are remarkable. She is very punctual, and her sick time usage is very minimal, if any. She is very conscientious of privacy issues, and has never breach [sic] confidentiality with any of our customers. [redacted] leadership skills are top rated. I rely on her to assist me with orienting new staff members. She has the ability to make any new employee feel very welcome. [redacted] is very patient and has a great knack to teach new information in a way that is understandable....

[redacted]..has very strong family values. Her family is very important to her and she always strives to maintain a healthy balance between work and family.

Overall [redacted] is an outstanding person, in both her work and personal life. She sets her standards high and is always working to achieve them.

Letter from [redacted], RN, Supervisor Medical Review Unit, Saskatchewan Government Insurance, dated December 14, 2005.

The record reflects that 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 U.S. citizen spouse would suffer hardship if the applicant were unable to reside in the United States. 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 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-Morales, 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 hardships that the qualifying relative would face if the applicant were not permitted to reside in the United States, support letters on behalf of the applicant from friends, colleagues and supervisors, gainful employment, property ownership, and the passage of more than 20 years since the violation that lead to conviction of crimes involving moral turpitude. The unfavorable factor in this matter is the applicant's criminal convictions.

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 her 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.