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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

#2

APR 24 2009



FILE:



Office: LOS ANGELES, CALIFORNIA
[consolidated therein]

Date:

IN RE:

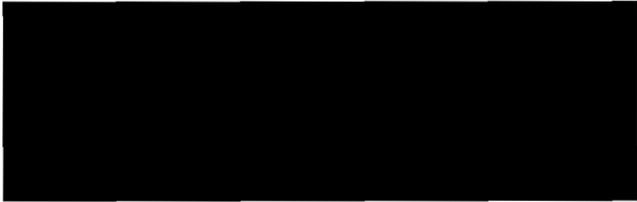
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, 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 Mexico 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. The record indicates that the applicant's children are United States citizens and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks 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 his United States citizen children.

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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated August 31, 2006.

On appeal, the applicant and his girlfriend state their daughter and the applicant's other children from his previous marriage will suffer extreme hardship if the applicant is removed from the United States. *See letter from [REDACTED] dated October 9, 2006; see also letter from the applicant, dated October 9, 2006.*

The record includes, but is not limited to, letters from the applicant, his girlfriend, his ex-wife, and his children; and court dispositions for the applicant's arrests and convictions. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on July 17, 1979, the applicant was convicted of attempted grand theft, and was sentenced to 240 days in jail. On July 1, 1980, the applicant was convicted of burglary, and on August 28, 1980, the applicant was sentenced to sixteen (16) months in jail. On January 18, 1984, the applicant was convicted of grand theft auto, and was sentenced to two (2) years in prison.

The AAO notes that robbery and theft offenses are considered crimes involving moral turpitude. *See Matter of Carballe*, 19 I&N Dec. 357 (BIA 1986); *see also Matter of Martin*, 18 I&N Dec. 226 (BIA 1982); *Matter of Garcia*, 11 I&N Dec. 521 (BIA 1966); *Chen v. INS*, 87 F.3d 5 (1st Cir. 1996). Additionally, burglary has been held to be a crime involving moral turpitude where it involves breaking and entering with intent to commit larceny or another crime involving moral turpitude. *See Matter of R-*, 1 I&N Dec. 540 (BIA 1943). The AAO notes that the record of conviction establishes that the applicant entered the victim's business with intent to commit larceny; therefore, the applicant burglary conviction was for a crime involving moral turpitude. Therefore, the AAO finds that the applicant has been convicted of crimes involving moral turpitude and is now inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act. Additionally, the AAO notes that the applicant has not disputed that his convictions are for crimes involving moral turpitude or that he is inadmissible under section 212(a)(2)(A) of the Act.

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

(A) *Conviction of certain crimes.*—

- (i) In general.—Except as provided in clause (ii), any 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...

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

- (h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of 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 [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 established to the satisfaction of the [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 [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has

consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

The AAO notes that the applicant's last conviction for grand theft auto occurred on January 18, 1984. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on March 12, 1996, and no decision has been made on that application. The AAO notes that the applicant's conviction did not occur in excess of 15 years prior to his filing for adjustment of status; however, an application for admission or adjustment is a "continuing" application, adjudicated on the basis of the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). The AAO finds that there has been no final decision made on the applicant's I-485 application filed on March 12, 1996, so the applicant, as of today, is still seeking admission by virtue of his application for adjustment of status. Therefore, the crime involving moral turpitude for which the applicant was found inadmissible occurred more than 15 years prior to the applicant's application for adjustment of status.

The AAO finds that the District Director erred in basing her decision on section 212(h)(1)(B) of the Act and failing to consider the eligibility of the applicant for a waiver under section 212(h)(1)(A). The AAO notes that the applicant admitted to being arrested on June 20, 1978; July 6, 1978; September 27, 1983; and August 13, 1985; however, the applicant was not convicted of any crimes stemming from these arrests. Therefore, the AAO notes that the applicant has not been convicted of any additional criminal charges since his last conviction in 1984. The applicant states he "deeply regret[s] the wrong that [he] did to the victims of [his] acts. It is a time that [he] never want[s] to experience again. [His] actions were wrong, and [he] [has] tried to learn the lessons from them." *Affidavit from the applicant*, dated November 6, 1997. The applicant's ex-wife states the applicant "is well aware of his past and has acknowledge[d] his mistakes in life. He has been able to maintain and live as an [sic] law abiding citizen." *Letter from [REDACTED]*, dated October 23, 2006. The applicant's girlfriend states the applicant "is an extremely hard working citizen who has always taken care of his responsibilities and [she] know[s] he has made some bad choices in his life but that was a very long time ago and since then has done nothing but good in his life." *Letter from [REDACTED]*, *supra*. Dr. [REDACTED] states the applicant "has put his past behind him and strived to better himself by being a model citizen. He has provided for his wife and children and always worked hard." *See letter from [REDACTED]* undated. The AAO notes that there are no additional convictions on the applicant's record further, attesting to his rehabilitation, and the record of proceedings does not establish that the admission of the applicant to the United States would be "contrary to the national welfare, safety, or security of the United States."

The record reflects that the applicant meets the requirements for waiver of his grounds of inadmissibility under section 212(h)(1)(A) of the Act. Further, the AAO notes that the applicant's United States citizen children would suffer hardship as a result of their separation from the applicant. *See letter from [REDACTED]* *supra*; *see also letter from [REDACTED]*, *supra*. Ms. [REDACTED] states the applicant has been employed with her company since November 1985, he supervises 35 employees, and he "is a dedicated, responsible employee, who has demonstrated his

leadership qualities in every aspect of his position.” *Letter from* [REDACTED] dated October 30, 1997. The applicant’s ex-wife, [REDACTED] states the applicant has “maintained great employment of 21 years and is a valuable employee and is a great asset to the company.” *Letter from* [REDACTED] *supra*. Additionally, [REDACTED] states the applicant provides support for all of his children, including paying for all of their medical insurance. *Id.* The AAO notes that even though the applicant is divorced from [REDACTED] he provides significant financial support to her as she is physically disabled. *Id.*, see also *letter from the applicant*, dated October 9, 2006. The applicant’s girlfriend states the applicant is the primary wage earner in the household and without the applicant’s financial support, she could not take care of all their expenses and the baby, and she would have to rely on welfare. See *letter from* [REDACTED] *supra*.

The favorable factors presented by the applicant are the hardship to his United States citizen children, who depend on him for emotional and financial support; the applicant’s stable work history in the United States; the applicant’s history of paying his federal income taxes; and the lack of any other criminal convictions since his last conviction in 1984.

The unfavorable factors presented in the application are the applicant’s convictions for attempted grand theft on July 17, 1979, burglary on July 1, 1980, and grand theft auto on January 18, 1984. The AAO notes that the applicant has not been convicted of any criminal violations since his last conviction and the applicant’s crimes occurred more than 15 years ago.

While the AAO does not condone his actions, the applicant has established that the favorable factors in his application outweigh the unfavorable factors. The District Director’s denial of the I-601 application is withdrawn.

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 now met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the application is approved.