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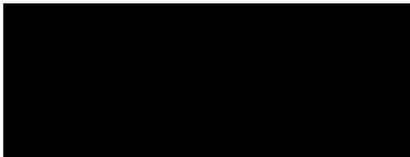
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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

H2



FILE:



Office: CHICAGO, IL

Date:

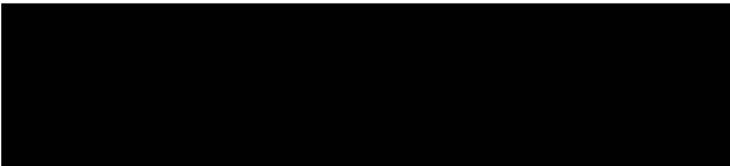
AUG 25 2009

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 Interim 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 United States citizen, the father of a United States citizen, and the son of a naturalized United States citizen. He 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, child and father.

The Interim 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 Interim District Director*, dated February 18, 2006.

On appeal, counsel states that United States Citizenship and Immigration Services (USCIS) erred in failing to consider hardship to the applicant's United States citizen son. *Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO)*. Counsel submits additional evidence regarding the applicant's spouse in support of the applicant's eligibility for a waiver under section 212(h) of the Act. *Attorney's statement, statement from the applicant's spouse, and attached newspaper articles*.

In support of these assertions, counsel submits a brief and statements. The record also includes, but is not limited to, statements from the applicant's spouse; newspaper articles; employment letters for the applicant; a statement from the applicant; medical bills and prescriptions for the applicant's father; published articles on health issues; a statement from the applicant's son; a cadet record brief for the applicant's son; awards certificates for the applicant's son; grade report card and test scores for the applicant's son; a statement from the principal of St. James Lutheran Church and School; a statement from the Local 25 S.E.I.U. Welfare Fund; an employee identification card for the applicant's spouse; a personnel action request for the applicant's spouse; tax returns and W-2 Forms for the applicant and his spouse; an employment letter for the applicant's spouse; earnings statements for the applicant; and criminal records for the applicant. The entire record was considered in rendering a decision on the appeal.

The record reflects that on May 22, 1980 the applicant was convicted of retail theft under section 38-16-(a)(3)(a) of the former Illinois Criminal Code. *Records Division, Chicago Police Department*, dated July 31, 1997. He was placed on supervision for one year. *Id.* On November 9, 1992 the applicant was convicted of shoplifting under section 38-16a-(3)(a) of the former Illinois Criminal Code. *Id.* The applicant was placed on supervision for one year. *Id.* Under *Matter of Grazley*, the Board of Immigration Appeals (BIA) found that, ordinarily, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended. 14 I&N Dec. 330 (BIA 1973). In *Matter of Jurado*, the BIA held that violation of a Pennsylvania theft statute involved moral turpitude because the nature of retail theft is such that it is reasonable to assume such an offense would be committed with the

intention of retaining the merchandise permanently. 24 I&N Dec. 2933-34 (BIA 2006), The reasoning in *Jurado* is applicable to the present case. As the applicant's crimes involve retail theft, he has been convicted of knowingly taking the property of another with the intent to permanently deprive that person of the property. As such, the applicant is inadmissible under section 212(a)(2)(A) of the Act.¹

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 . . .

¹On November 8, 1983 the applicant was convicted of solicitation of a prostitute under section 38-11-(15)(a)(1) of the former Illinois Criminal Code and was placed on supervision for three months. *Records Division, Chicago Police Department*, dated July 31, 1997. As the AAO has found the applicant to have committed two crimes involving moral turpitude involving retail theft, this prostitution conviction will not be addressed.

An application for admission or adjustment is a “continuing” application, 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). The date of decision is the date of the final decision on the application, which in this case must wait the AAO’s findings in the present matter. Therefore, section 212(h)(1)(A) of the Act applies to the applicant as the activities that rendered him inadmissible to the United States occurred more than 15 years prior to his application for adjustment of status. He may establish eligibility for a waiver by showing that he is not a risk to the welfare, safety or security of the United States and has been rehabilitated. The applicant in this matter has not been convicted of any criminal activity in over 15 years. *FBI sheet*, dated September 25, 2002.

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. Rather, it indicates that he and his spouse have paid federal taxes. *Tax statements*. Further, there is nothing in the record that points to the applicant’s involvement in any activities that would undermine national safety or security. The applicant has not been convicted of any crime since 1993. *Records Division, Chicago Police Department*, dated July 31, 1997; *FBI sheet*, dated September 25, 2002. 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 U.S. citizen spouse, U.S. citizen child, and naturalized U.S. citizen father. *Birth certificates and naturalization certificate*. The applicant’s spouse and child attest to the positive role that the applicant has played in their lives. *Statements from the applicant’s spouse and child*, dated November 20, 2007, October 15, 1998 and undated. As previously noted, the applicant has also paid taxes. *Tax statements*. Additionally, the AAO notes the letter from the principal of St. James Lutheran Church and School, which describes the applicant as a dependable friend and an asset to the community. *Statement from the principal of St. James Lutheran Church and School*, dated November 12, 2002. Having reviewed the record, the AAO finds the favorable factors to outweigh the unfavorable factors of the applicant’s prior criminal convictions. The AAO therefore finds that the applicant qualifies for a 212(h) waiver of his inadmissibility 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.