



U.S. Citizenship
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FILE: [REDACTED] Office: LOS ANGELES, CA

Date: JAN 22 2009

IN RE: Applicant: [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)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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved. The matter will be returned to the district director for continued processing.

The applicant is a native and citizen of Honduras. In January 1988, the applicant was convicted of Petty Theft, a violation of section 488 of the California Penal Code; probation and 5 days imprisonment was imposed.¹ In June 1988, the applicant was convicted of Annoying or Molesting Child under 18, a violation of section 647.6 [previously section 647a] of the California Penal Code and Being Under Influence of a Controlled Substance, a violation of section 11550 of the California Health and Safety Code; probation and 90 days imprisonment was imposed.² The applicant is thus

¹ § 488 of the California Penal Code states:

Petty theft defined

Theft in other cases is petty theft.

§ 490 of the California Penal Code states:

Petty theft is punishable by fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding six months, or both.

² § 647.6 of the California Penal Code states, in pertinent part:

Annoying or molesting child under 18; punishment

Every person who annoys or molests any child under the age of 18 is punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment in the county jail for not exceeding one year or by both the fine and imprisonment.

§ 11550 of the California Health and Safety Code states:

No person shall use, or be under the influence of any controlled substance which is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, specified in paragraph (1) or (2) of subdivision (d) or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in Schedule III, IV, or V, except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances. It shall be the burden of the defense to show that it comes within the exception. Any person convicted of violating any provision of this subdivision is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90 days

deemed to be inadmissible for having committed crimes involving moral turpitude and for having violated a law relating to a controlled substance. The applicant does not contest the district director's findings. He 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 U.S. citizen spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated April 7, 2006.

In support of the appeal, the applicant submitted the Form I-290B, Notice of Appeal, dated May 5, 2006. In addition, on May 27, 2006, the applicant's spouse submitted a letter and medical documentation. 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, or
- (II) a violation of...any law or regulation of a State, the United States, or a foreign country relating to a controlled substance... is inadmissible.

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

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 -

or more than one year in the county jail. The court may place a person convicted under this subdivision on probation for a period not to exceed five years and shall in all cases in which probation is granted require, as a condition thereof, that such person be confined in the county jail for at least 90 days. In no event does the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 90 days in confinement in the county jail.

- (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 Honduras unnecessary, as a waiver of inadmissibility is available to the applicant under section 212(h)(1)(A) of the Act. The above-referenced crimes 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 since the above-referenced incidents in 1988, more than twenty years ago, which indicates rehabilitation.

To further support the applicant's rehabilitation, the applicant's U.S. citizen spouse provides a statement. As she asserts,

In '89-'90 God got a hold of [redacted] [the applicant] and straightened him out, and [redacted] has been and stayed in church ever since. In fact, that is where I met him ten years ago— in church. I have known him for 10 years and we have been happily married for 8 years.

We have been members of World Harvest Church in Murrieta since 1996. Wilfredo is a hard-working, decent, God-fearing man, and the people who know him would tell you he is a blessing to many....

Letter from [redacted], dated March 20, 2003.

Additional evidence of the applicant's good moral character and rehabilitation has been provided in the form of a letter from [REDACTED] World Harvest Church, who has known the applicant for over six years. *Letter from [REDACTED] dated February 11, 2003.*

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 as a result of her 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 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. spouse and extended family members, residing in the United States as U.S. citizens or lawful permanent residents, the hardships that the applicant's U.S. citizen spouse would face if the applicant were not present in the United States, in light of her heart condition, community ties, payment of taxes, business ownership, long-term gainful employment, and the passage of more than 20 years since the violations that lead to the above-referenced convictions. The unfavorable factors in this matter are the applicant's criminal

convictions, entry without inspection, and periods of 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. The district director shall continue to process the applicant's adjustment of status application.