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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

H/2

FILE:

Office: CHICAGO, IL

Date:

JUL 02 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 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 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 son of a naturalized citizen of the United States and the father of three United States citizen children and 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 mother and children.

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*, undated.

On appeal, counsel contends that United States Citizenship and Immigration Services (USCIS) erred as a matter of law in considering the applicant's eligibility for a waiver under section 212(i) of the Act rather than section 212(h) of the Act. Counsel also asserts that USCIS erred in conducting an extreme hardship analysis given the fact the applicant's convictions occurred more than 15 years ago. Counsel states that the admission of the applicant would not be contrary to the national welfare, safety or security of the United States and that the applicant has been rehabilitated. In the alternative, counsel asserts that the applicant has demonstrated that his qualifying relatives would suffer extreme hardship. *Form I-290B; Attorney's brief*.

In support of her assertions, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant; a school transcript for the applicant; a high school equivalency certificate for the applicant; certificates of achievement and recognition for the applicant; a statement from the applicant's mother; medical prescriptions for the applicant's mother; published reports on medication; statements from the applicant's children; school transcripts for the applicant's children; certificates of achievement for the applicant's children; a statement from the applicant's spouse; a statement from the applicant's brother; a statement from the applicant's sister; a statement from the school principal of the applicant's children; W-2 Forms for the applicant and his spouse; tax statements for the applicant and his spouse; employment letters 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 January 12, 1982 the applicant pled guilty to the offense of Burglary and was sentenced to three years of probation and ordered to pay a fine. *Certified Statement of Conviction, Circuit Court of Cook County, Illinois*, dated September 18, 1986. Additionally, on April 27, 1983 the applicant was convicted of Theft and Attempted Escape for which he received a 90-day sentence. *Criminal history record, City of Chicago, Department of Police, Chicago, Illinois*, issued February 25, 1986. A review of the applicant's record of conviction establishes that the applicant has been convicted of crimes involving moral turpitude and is inadmissible under section 212(a)(2)(A) of the Act. The applicant does not contest these findings.

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 . . .

The AAO notes that the Interim District Director erred in considering the applicant's eligibility for a waiver under section 212(i) rather than section 212(h) of the Act. Furthermore, the AAO finds that the applicant does not need to show extreme hardship to his qualifying relative in order to establish eligibility for a section 212(h) waiver.

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). Therefore, section 212(h)(1)(A) of the Act applies to the applicant as the crimes for which he has been found 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 25 years. *Certified Statement of Conviction, Circuit Court of Cook County, Illinois*, dated September 18, 1986; *Criminal history record, City of Chicago, Department of Police, Chicago, Illinois*, issued February 25, 1986.

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 1983. *FBI sheet*. The applicant also shows a consistent work history as evidenced by statements from his employers and his W-2 Forms. He has received his General Education Development (GED) diploma and has taken college courses in graphic communication. *Illinois State Board of Education High School Equivalency Certificate*, dated July 21, 1983; *Official Transcript, Kennedy-King College, Chicago, Illinois*, dated May 9, 2006. 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 naturalized U.S. citizen mother and three U.S. citizen children. *See Naturalization Certificate; United States birth certificates*. The applicant's three children attest to the positive role that the applicant has played in their lives. *Statements from the applicant's children*. A statement from the Goethe Elementary School principal notes the applicant's character and his involvement in his children's education. *Statement from [REDACTED] Goethe Elementary School*, dated May 8, 2006; and statements of support from the applicant's brother and sister. *Statements from the applicant's brother and sister*, undated and dated May 16, 2006. As previously noted, the applicant has also paid taxes. *See letter of employment; Forms W-2; tax statements*. The AAO finds that these favorable factors 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.