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

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[redacted]

FILE: [redacted] Office: FRANKFURT, GERMANY Date: JUL 17 2009

IN RE: [redacted]

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

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 Officer in Charge, Frankfurt, Germany. The matter 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 Nigeria 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 a crime involving moral turpitude. The record indicates that the applicant was convicted of two counts of credit card fraud in October 1986 and sentenced to two years imprisonment for each count. The applicant was deported to Nigeria in September 1994. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with his wife and U.S. citizen children in the United States. The officer in charge found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Officer in Charge*, dated March 15, 2007.

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 (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 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.

> (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 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 . . . .

It is well established that fraud is a crime involving moral turpitude. *See Winestock v. INS*, 576 F.2d 234, 235 (9th Cir. 1978) (stating that "[a] crime having as an element the intent to defraud is clearly a crime involving moral turpitude") (citing *Lozano-Giron v. INS*, 506 F.2d 1073 (7th Cir. 1974), and *United States v. Wilkerson*, 469 F.2d 963 (5th Cir. 1972)). Therefore, the applicant is inadmissible under section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), for having committed a crime involving moral turpitude.

The officer in charge evaluated the applicant's waiver application for extreme hardship to a qualifying relative under section 212(h)(1)(B). However, as explained below, the AAO finds that the applicant has shown that he is eligible for a waiver under section 212(h)(1)(A).

A section 212(h)(1)(A) waiver is dependent upon a showing that the activities for which the alien is inadmissible occurred more than fifteen years before the date of the alien's application for a visa admission or adjustment of status application; the alien's admission to the United States would not be contrary to the national welfare, safety, or security of the United States; and the alien has been rehabilitated. *See* section 212(h)(1)(A) of the Act, 8 U.S.C. § 1182(h)(1)(A). Once eligibility for a waiver is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

In this case, the applicant has shown that he is eligible for consideration of a section 212(h)(1)(A) waiver as it has been more than fifteen years since the activities which made him inadmissible. In addition, the evidence indicates that the alien has been rehabilitated and his admission to the United States would not be contrary to the national welfare, safety, or security of the country. The applicant, who was a lawful permanent resident at the time of his conviction, has never violated U.S. immigration laws. In addition, the applicant has not had any further arrests or convictions for over twenty-two years. Furthermore, the applicant has a U.S. citizen wife, three U.S. citizen children, and nine grandchildren, many of whom have not seen or met the applicant since his deportation in 1994. Based on this information, the AAO finds that the applicant has been rehabilitated and his admission is not contrary to the national welfare, safety, or security of the United States.

The AAO further finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

The adverse factor in this case is the applicant's criminal conviction. The positive factors in this case include the applicant's significant family ties in the United States, including his wife, three

children, and nine grandchildren. In addition, excluding the applicant's conviction of a crime involving moral turpitude, the applicant has not violated any U.S. immigration laws and has not had any further arrests or convictions for over twenty-two years.

The AAO finds that, although the applicant's criminal history is serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.