

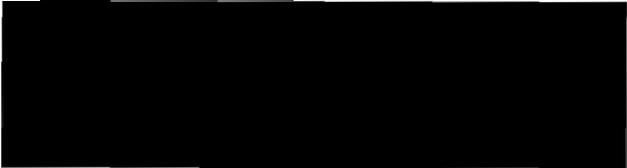


U.S. Citizenship
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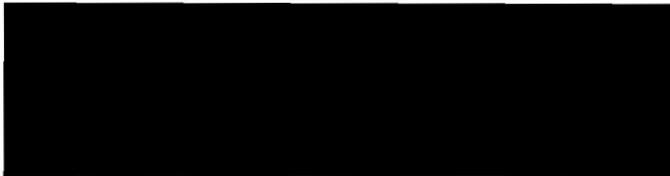
Date: **JUN 24 2009**

IN RE:



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:



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 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 a crime involving moral turpitude. The record indicates that the applicant has been arrested and convicted three times, as follows:

1. On March 20, 1989, the applicant was arrested and subsequently convicted of burglary in violation of California Penal Code § 459. He served seven days in jail and was sentenced to three years probation.
2. On December 23, 1991, the applicant was arrested and subsequently convicted of driving under the influence of alcohol or drugs, or under their combined influence, and driving a vehicle while having 0.08 percent and more of alcohol in his blood in violation of California Vehicle Code §§ 23152(a) and (b). He was sentenced to three years probation.
3. On June 10, 1994, the applicant was arrested and subsequently convicted of forgery or counterfeiting of seals in violation of California Penal Code § 472. He was sentenced to three years probation.

The applicant is married to a legal permanent resident 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 in the United States. The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated October 4, 2006.

On appeal, counsel contends that the applicant's wife clearly demonstrated that she would suffer extreme hardship if her husband's waiver application were denied.

The record contains, *inter alia*: a copy of the marriage license of the applicant and his wife, Ms. [REDACTED], indicating they were married on December 22, 1998; a declaration and a letter from the applicant; a letter from [REDACTED] tax documents; conviction documents; letters from the applicant's employer; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

In the recently decided *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. However, with respect to the applicant's most recent conviction, the AAO notes that the statute under which the applicant was convicted is not a divisible statute. Moreover, it is well established that forgery is a crime involving moral turpitude and counsel does not contend otherwise. 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" and holding that a violation of California Penal Code section 472 for forgery or counterfeiting of seals is 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 district director 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 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 a section 212(h)(1)(A) waiver. 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). There has been no final decision made on the applicant's I-485 adjustment application, so the applicant, as of today, is still seeking to adjust his status to that of a legal permanent resident. The applicant's most recent crime involving moral turpitude occurred on June 10, 1994, when the applicant was arrested and subsequently convicted of forgery or counterfeiting of seals. Therefore, the activities for which the applicant is inadmissible occurred more than fifteen years before the date of the alien's application for adjustment of status.

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 has not had any further arrests or convictions for over ten years. Furthermore, the applicant has been gainfully employed as a gardener for over six years. *Letter from* [REDACTED] dated July 1, 2006. The applicant's employer states that the applicant "is possibly the best physical worker [she] has ever had," and that he is "responsible, trustworthy, [and] knowledgeable." *Id.*; *see also Letter from* [REDACTED] dated March 28, 2006 (stating that the applicant is an invaluable part of the business). 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 factors in this case are the applicant's initial entry into the United States without inspection, periods of unauthorized presence, and the applicant's three criminal convictions.

The positive factors in this case include the applicant's significant family ties in the United States, including his wife, five step-children who consider the applicant their father, and two grandchildren.

In addition, the applicant has been a conscientious employee and has paid taxes while working in the United States. Furthermore, he has not had any further arrests or convictions for fifteen years.

The AAO finds that, although the applicant's immigration violation and criminal history are very 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.