

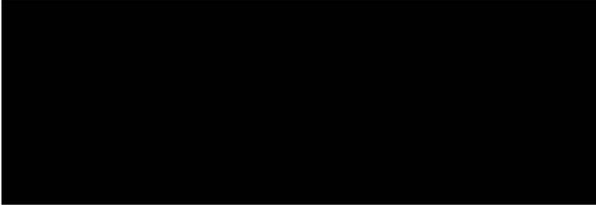
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



U.S. Citizenship
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FILE:



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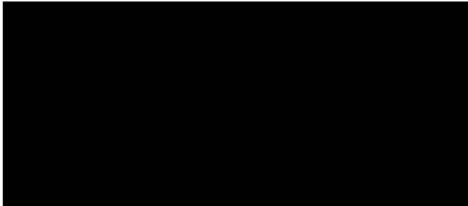
Date:

MAR 20 2009

IN RE:

APPLICATION: 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Pakistan 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 (misprision of a felony). The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may remain in the United States with his wife.

The district director based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's conviction for misprision of a felony in the U.S. District Court for the District of North Dakota. *See Decision of the District Director* dated October 31, 2006. The record reflects that the applicant was convicted of the offense of misprision of a felony in violation of 18 U.S.C. § 4 on August 31, 1995. *See U.S. District Court for the District of North Dakota, Judgment in a Criminal Case* dated August 31, 1995.

The district director also found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly, based on the requirements of section 212(h)(1)(B) of the Act. *See Decision of the District Director* dated October 31, 2006.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) erred in determining that misprision of a felony is a crime involving moral turpitude because it does not involve evil intent and has been found to be an offense separate and distinct from the particular felony concealed. *See Counsel's Brief in Support of Appeal* at 5-6. Counsel further asserts that misprision of a felony is not an aggravated felony as defined in section 101(a)(43)(S) of the Act, 8 U.S.C. § 1101(a)(43)(S). *Brief* at 7. Counsel additionally claims that USCIS erred and abused its discretion in determining that the applicant failed to establish that his removal would cause his spouse to suffer extreme hardship. *See Brief* at 8. In support of the waiver application and appeal counsel submitted an affidavit from the applicant's wife, a deed and mortgage statements for their home, and a letter from the applicant's wife's doctor. The entire record was reviewed and considered in arriving at a 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.

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

Section 212(h) states in pertinent part:

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-

(1)(A) [I]t is established to the satisfaction of the Attorney General that-

(i) [T]his 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 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 record indicates that the applicant pleaded guilty to one count of misprision of a felony in violation of 18 U.S.C. § 4, which provides:

4. Misprision of felony

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

The applicant was charged with misprision of a felony for concealing his knowledge of the submission of false and fraudulent insurance claims against the insurance policy covering his automobile on or about January 6, 1992. *See Information, United States of America v. [REDACTED] in the U.S. District Court for the District of North Dakota.* Counsel claims that the applicant's conviction does not involve moral turpitude because as defined by statute it does not

contain an element of evil intent. *Brief* at 6. Counsel additionally states that the offense of misprision of a felony has been found to be separate and distinct from the felony concealed, which in the present case is submission of false and fraudulent insurance claims. *See* ([REDACTED] v. *INS*, 557 F.2d 79, 83 (6th Cir. 1977)). The U.S. Court of Appeals for the 11th Circuit had held, however, that misprision of a felony under 18 U.S.C. § 4 is a crime involving moral turpitude. *Itani v. Ashcroft*, 298 F.3d 1213, 1216 (11th Cir. 2002) (stating that misprision of a felony “necessarily involves an affirmative act of concealment or participation in a felony, behavior that runs contrary to accepted societal duties and involves dishonest or fraudulent activity.”). The AAO therefore finds that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act because he was convicted of a crime involving moral turpitude. The AAO notes that the applicant was convicted of a crime involving moral turpitude in 1995 for conduct that occurred on or about January 6, 1992, more than 15 years prior to the applicant’s application for admission. Since more than 15 years have passed since the criminal activity for which he was convicted, the applicant is now statutorily eligible for a waiver pursuant to section 212(h)(1)(A) of the Act.

The record reflects that the applicant is a forty-two year-old native and citizen of Pakistan who last entered the United States as an F-1 student on January 7, 1995 and has resided in the United States since entering as a student in 1990. The applicant’s wife is a thirty-three year-old native of Pakistan and citizen of the United States whom he married on April 16, 2004. They currently reside in Plantation, Florida.

The applicant was convicted in 1995 of misprision of a felony for concealing his knowledge of fraudulent insurance claims filed with the company insuring his automobile. The offense he committed was not a crime of violence, and the record does not establish that the admission of the applicant to the United States would be “contrary to the national welfare, safety, or security of the United States.” Further, the record establishes that the applicant has rehabilitated. This conduct for which he was convicted took place in January 1992, and the applicant has not been arrested or charged with any other crime. Evidence on the record indicates that the applicant and his wife own a business and a home and the applicant has been employed and filed income tax returns while residing in the United States. *See U.S. Individual Income Tax Returns filed jointly with the applicant’s spouse for tax years 2004 to 2005, submitted with Affidavit of Support; warranty deed and mortgage account summary for the applicant’s home.*

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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 section 212(h)(1)(B) 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-Morales, 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 adverse factor in the present case is the applicant's conviction for misprision of a felony. As noted above, more than fifteen years has passed since the applicant committed this offense. The AAO further notes that the applicant was admitted as an F1 Student for the duration of his status as a student, and remained in the United States after he completed his studies and after an application for asylum he filed in 1992 was denied in 1994. Aside from his unlawful presence in the United States until he filed an application for adjustment of status in 2004, the applicant has not otherwise violated the immigration laws.

The favorable factors in the present case are the applicant's length of residence and family ties in the United States, including a U.S. citizen wife and his mother-in-law and father-in-law. The applicant's wife states the applicant is hardworking, loving, and caring and "has been a constant and incredible support" who is involved in her treatment for diabetes and thyroid problems and makes sure she takes her medication every day. *See affidavit from [REDACTED]* dated September 22, 2006. The applicant has also been employed and filed income tax returns in the United States.

The AAO finds that the crime committed by the applicant is serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.