



U.S. Citizenship  
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[REDACTED]

FILE:

[REDACTED]

Office: MIAMI, FLORIDA

Date:

MAR 20 2009

IN RE:

[REDACTED]

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 PETITIONER:

[REDACTED]

INSTRUCTIONS:

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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 Acting 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 Cuba 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 crimes involving moral turpitude. The applicant is married to a U.S. citizen, has two U.S. citizen children and U.S. citizen parents. He 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 family.

The AAO notes that the applicant has an extensive criminal record. The record indicates that on November 10, 1972 in New York, the applicant was convicted of 2<sup>nd</sup> Degree Larceny and 4<sup>th</sup> Degree Criminal Mischief based on events that occurred on September 25, 1971. The record shows that on June 8, 1975 the applicant was arrested in Florida for Opposing a Police Officer, but the arrest records have been destroyed and there is no conviction for this arrest. On July 15, 1975 the applicant was arrested for Buying Stolen Property and the charge was Nolle Prossed. On January 15, 1976, the applicant was convicted in Dade County, Florida, of two counts of Robbery and two counts of False Imprisonment for events that occurred on July 30, 1975; of Assault with Intent to Commit a Felony for events that occurred on July 31, 1975; and of Robbery for events that occurred on August 7, 1975.

The record reflects that an initial investigation into the applicant's criminal record revealed that the applicant was indicted by the U.S. Marshalls for a Violation of the Federal Controlled Substance Act and Conspiracy to Distribute a Controlled Substance. A subsequent investigation showed that the person named in the indictment was not the applicant.

Finally, on March 30, 1996, the applicant was arrested and charged with Possession of Cocaine. On February 6, 1997 the charge was Nolle Prossed.

The acting district director found that the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for his convictions for 2<sup>nd</sup> Degree Grand Larceny, 4<sup>th</sup> Degree Criminal Mischief, Robbery, and False Imprisonment. *Decision of the Acting District Director*, dated April 18, 2006.

On appeal, counsel states that the applicant is not required to show extreme hardship to his qualifying relatives because the events surrounding the applicant's convictions occurred more than fifteen years ago and the applicant is eligible to apply for a waiver under section 212(h)(1)(A). *Form I-290B*, dated May 17, 2006. Counsel also states that the applicant was not convicted of false imprisonment because there was no probable cause and the crimes committed by the applicant in 1971 occurred when he was a juvenile. *Id.*

The AAO finds that the record does not support a finding that the applicant was not convicted of False Imprisonment as court records dated January 17, 2003 show a disposition of convicted for two counts of False Imprisonment. The AAO also finds that the applicant's conviction on November 10, 1972 occurred when the applicant was a juvenile. The AAO notes that a juvenile court disposition is not a conviction for immigration purposes. *Matter of Devison*, 22 I&N Dec. 1362 (BIA 2000); *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981). Thus, the applicant's convictions for crimes involving moral turpitude include: three counts of

Robbery, two counts of False Imprisonment, and one count of Assault with Intent to Commit a Felony. The events that led to these convictions occurred in 1975, more than thirty years ago.

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 finds that the acting district director erroneously based his decision on section 212(h)(1)(B) of the Act and failed to consider the eligibility of the applicant for a waiver under section 212(h)(1)(A). The record reflects that the applicant has not been convicted of any additional crimes since his convictions in 1975, more than fifteen years from the date of his current application for adjustment of status.

The record reflects that the applicant meets the requirements for waiver of his grounds of inadmissibility under section 212(h)(1)(A) of the Act. The applicant has not been convicted of a crime for over thirty-three years, he has been married to his U.S. citizen spouse for twenty-three years, and he has been employed with MCI Express, Inc. since 1990. In addition, counsel submits a Certificate of the Restoration of Civil Rights, dated May, 6, 1983, for the applicant as a demonstration that the applicant is not a threat to the national safety, welfare or security of the United States.

The only unfavorable factors presented in the application are the applicant's criminal convictions in 1975, which occurred when the applicant was twenty years old. The AAO notes that the applicant has not been convicted of another crime since his 1975 conviction and the applicant's crimes occurred more than thirty-three years ago, demonstrating the applicant's rehabilitation. Thus, the applicant has established that the favorable factors in his application outweigh the unfavorable factors.

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.