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U.S. Citizenship  
and Immigration  
Services

H2

FILE:

Office: LOS ANGELES, CA

Date:

20 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.

A handwritten signature in black ink that reads "Michael Shumway".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant, a native and citizen of Mexico, 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 crimes involving moral turpitude. The applicant has a U.S. citizen spouse and five U.S. citizen stepchildren. The applicant seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with his family in the United States.

The district director 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. *District Director's Decision*, dated March 14, 2006.

On appeal, counsel states that the district director erred in not considering all the hardship factors in the applicant's case and that the district director's decision should be reversed. *Form I-290B*, dated April 4, 2006.

The record indicates that on May 22, 1986 the applicant was convicted of Possession of a Dangerous Weapon under California Penal Code 12020 and on May 15, 1986 the applicant was convicted of Receiving Stolen Property under California Penal Code 496.

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, that:

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) . . . 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;

The record indicates that the applicant was convicted of offenses that were committed in 1985 and 1986. His current application for adjustment of status is more than 15 years after those activities; he is therefore eligible for a waiver pursuant to section 212(h)(1)(A) of the Act.

The applicant's spouse states that she and the applicant have been married since 1989 and that when he has permission to work, the applicant works as a truck driver and she works as a nurse. *Spouse's Statement*, dated August 13, 2004. The applicant's spouse states that on Sundays she and the applicant go to church together at the Family Worship Center, on Mondays they go to bible study, and once a month they go to Bible College. The applicant's spouse states that if the applicant's waiver is approved the applicant has promised to find steady work so that she can return to school to be a licensed dietician. She states that when she and the applicant first married three of her children were still living with her and the applicant helped her raise her children. She states that he is very close to her children. *Id.* The record also indicates that after fulfilling his conditions of probation, the applicant's conviction under California Penal Code 496 was vacated and a plea of not guilty was entered.

The AAO finds that the applicant has shown that his admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and that he has been rehabilitated.

The AAO finds that the crimes committed by the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that more than fifteen years have passed since the commission of those crimes and the record shows that the applicant qualifies for a waiver pursuant to section 212(h)(1)(A) of the Act. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.