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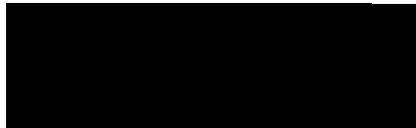
U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: Office: LOS ANGELES, CALIFORNIA Date: **MAR 30 2009**

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 or reopen, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in black ink that reads "John F. Grissom".

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 applicant is a native and citizen of [REDACTED]. He was found to be inadmissible to the United States pursuant to section 212(a)(2)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A), for having been convicted of a crime involving moral turpitude. The applicant 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 legal permanent resident spouse and U.S. citizen children.

In a decision dated September 29, 2005, the Director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel for the applicant asserts that the Director incorrectly interpreted the extreme hardship rule. Further, counsel contends that the Director did not consider all the facts and items of evidence in determining extreme hardship to the applicant's spouse. Counsel did not submit additional evidence on appeal.

The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2) of the Act states in pertinent part that:

(A)(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.

A crime involves moral turpitude where knowing or intentional conduct is an element of the offense. *Matter of Perez-Contreras*, 20 I&N Dec. 615, 618 (BIA 1992).

Section 212(h) of the Act provides, in pertinent part, that:

(h) The Attorney General 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 [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 record reflects that on November 25, 1987, the applicant was convicted in the Superior Court of California, County of Los Angeles, of one count of perjury under section 118 of the California Penal Code (CPC) and one count of grand theft under section 487(1) of the CPC.¹ The applicant was sentenced to sixteen months imprisonment. A review of the record and the applicable laws indicate that both perjury and grand theft are crimes involving moral turpitude. *See Flores v. Savoretti*, 205 F.2d 544 (5th Cir. 1953) (perjury is a crime involving moral turpitude); *Matter of Chen*, 10 I&N Dec. 671 (BIA 1964) (grand theft is a crime involving moral turpitude); *Rashtabadi v. INS*, 23 F.3d 1562, 1568 (9th Cir. 1994) (grand theft under section 487(1) of the CPC is a crime involving moral turpitude). In light of the applicant's convictions for crimes involving moral turpitude, the Director correctly determined that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest this finding regarding his ground of inadmissibility.

The Director's decision to deny the applicant's application for waiver of inadmissibility is based solely on consideration of extreme hardship to a qualifying relative under section 212(h)(1)(B) of the Act. However, the AAO finds that consideration of the eligibility of the applicant for waiver under section 212(h)(1)(A) is appropriate at this time, as explained below.

A section 212(h)(1)(A) waiver is dependent upon a showing that: (1) the offenses resulting in the convictions that rendered the applicant inadmissible occurred more than fifteen years before the date of the applicant's adjustment of status application; (2) the applicant's admission to the United States would not be contrary to the national welfare, safety, or security of the United States; and (3) the applicant has been rehabilitated. *See* section 212(h)(1)(A) of the Act, 8 U.S.C. § 1182(h)(1)(A). Once eligibility

¹ It is noted that in her decision, the Director only referred to one conviction for perjury under section 118 of the CPC. However, a close review of the court order dated November 25, 1997 reveals that the sentence imposed was for both Count I, perjury under section 118, and Count 5, grand theft under section 487.1, of the CPC.

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-Morales*, 21 I&N Dec. 296 (BIA 1996).

In this case, the record shows that the applicant 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). Here, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, on June 30, 2003. The AAO notes that the Director denied the applicant's Form I-485 on January 20, 2006, noting that the applicant had failed to file an appeal of the decision denying the applicant's application for a waiver of inadmissibility. However, the record indicates that the applicant's appeal of the Form I-601 denial was in fact timely filed on November 4, 2005. Therefore, the denial of the Form I-485 was premature and, as of today, the applicant is still seeking to adjust status to that of a permanent resident. Further, the record shows that the crimes involving moral turpitude that rendered the applicant inadmissible occurred in October 1987, thus more than fifteen years prior to the applicant's application for adjustment of status. Accordingly, the applicant is eligible for a section 212(h)(1)(A) waiver.

In addition, the evidence indicates that the applicant has been rehabilitated and his admission to the United States would not be contrary to the national welfare, safety, or security of this country. The applicant's record has been free of any further arrests or convictions for over twenty-one years. Furthermore, the AAO finds that the applicant merits a waiver of inadmissibility as a matter of discretion. The adverse factors in this case are the applicant's criminal convictions for offenses committed over twenty-one years ago and periods of unauthorized presence. The positive factors in this case include the applicant's family ties in the United States, including his U.S. citizen spouse to whom he has been married since 2000, who relies on him emotionally and financially, and his legal permanent resident mother, who also resides with him. In addition, the record indicates that the applicant has lived in the United States for nearly twenty-four years, has been working for the same employer since 1996, has been paying his taxes, and together with his spouse has owned a home since 2002.

In light of the above, the AAO finds that the applicant meets the requirements for waiver of his grounds of inadmissibility under section 212(h)(1)(A) of the Act. Furthermore, the record shows that the favorable factors in the applicant's application outweigh the unfavorable 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 and the application for waiver of inadmissibility is approved.