

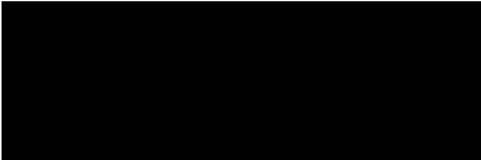


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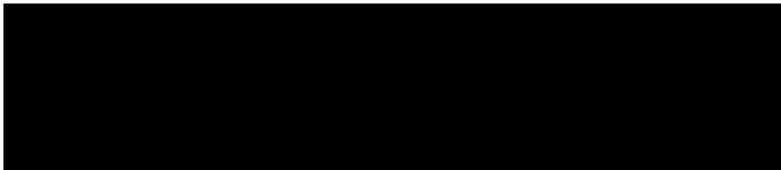
Office: LOS ANGELES, CA

Date: **MAY 11 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:



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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Guatemala 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 a crime involving moral turpitude. The applicant is the spouse of a lawful permanent resident and the mother of a United States citizen child. She seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that she may reside in the United States with her spouse and child.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 22, 2006.

On appeal, counsel submits additional evidence in support of the applicant's eligibility for a waiver under section 212(h) of the Act. *Counsel's brief*, dated November 13, 2006, *and attachments*.

In support of his assertions, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant's spouse; published country conditions reports; earnings statements and W-2 Forms for the applicant's spouse; tax statements for the applicant and her spouse; criminal records and court documents for the applicant; and an employment letter for the applicant's spouse. The entire record was considered in rendering a decision on the appeal.

The record reflects that on April 24, 1991 the applicant pled guilty to the offense of fraudulent insurance claim under section 1871.1(a)(6) of the 1991 California Insurance Code. *Probation Officer's Report, Superior Court of California, County of Los Angeles*, dated May 15, 1991. The applicant was sentenced to 90 days in jail, four years of probation and was ordered to pay a fine. *Court document, Superior Court of California, County of Los Angeles*, dated May 15, 1991. Any crime involving fraud is almost always a crime involving moral turpitude, whether against the government or individuals, except for false statements not amounting to perjury. *See Jordan v. DeGeorge*, 341 U.S. 223, 227-32 (1951); *Matter of Adetiba*, 20 I&N Dec. 506 (BIA 1992). As such, the AAO finds the applicant to have been convicted of a crime involving moral turpitude and to be inadmissible under section 212(a)(2)(A) of the Act.

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 . . .

An application for admission or adjustment is a "continuing" application, adjudicated based on the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). The date of decision is the date of the final decision on the application, which in this case must wait the AAO's findings in the present matter. Therefore, section 212(h)(1)(A) of the Act applies to the applicant as the activities that rendered her inadmissible to the United States occurred in 1990 and 1991, more than 15 years prior to her application for adjustment of status. She may establish eligibility for a waiver by showing that she is not a risk to the welfare, safety or security of the United States and has been rehabilitated. The applicant in this matter has not been convicted of any criminal activity in over 15 years. *FBI sheet*, dated April 13, 2006.

There is no indication in the record that the applicant has ever relied on the government for financial assistance or will rely on the government for financial assistance. Rather, it indicates that she and her spouse have paid federal taxes. *Tax statements*. Further, there is nothing in the record that points to the applicant's involvement in any activities that would undermine national safety or security. The applicant has not been convicted of any crime since 1991. *FBI sheet*, dated April 13, 2006. She also complied with all of the terms of her probation. *Probation Officer's Report, Superior Court of California, County of Los Angeles*, dated May 1, 1995. Therefore, the AAO finds the record to

demonstrate that admitting the applicant to the United States would not be contrary to its national welfare, safety, or security and that the applicant is rehabilitated.

The granting of the waiver is discretionary in nature. The favorable discretionary factors for the applicant in this case include the applicant's lawful permanent resident spouse and her US citizen child. *See lawful permanent resident card for spouse; United States birth certificate for child.* The applicant's spouse attests to the positive role that the applicant has played in his life. *Statements from the applicant's spouse*, dated October 31, 2006. As previously noted, the applicant has also paid taxes. *Tax statements.* The AAO finds that these favorable factors outweigh the unfavorable factors of the applicant's prior criminal conviction. The AAO therefore finds that the applicant qualifies for a 212(h) waiver of her inadmissibility pursuant to 212(a)(2)(A)(i)(I) of the Act.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden.

**ORDER:** The appeal is sustained.