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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:



Office: LOS ANGELES, CA

Date: **MAY 14 2009**

IN RE:



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 Colombia 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 the parent of a U.S. citizen and 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 daughter.

The director based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's two convictions in Los Angeles County. *District Director's Decision*, dated December 27, 2005. The record reflects that the applicant plead guilty and was convicted of Theft of Property under section 484(A) of the California Penal Code on April 8, 1993 and February 9, 1994. *Court Dispositions*, printed September 12, 2002. The 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. *District Director's Decision*, dated December 27, 2005.

On appeal, counsel asserts that the applicant's daughter would suffer extreme hardship as a result of her inadmissibility. *Brief in Support of Appeal*, dated February 24, 2006.

The record reflects that on April 8, 1993, the applicant was convicted of Theft of Property under section 484(A) of the California Penal Code for events that occurred on March 24, 1993. She was sentenced to three years probation and two days in jail. She was also made to pay of fine totaling \$810.00. *Court Disposition*, printed September 12, 2002. On February 9, 1994 the applicant was again convicted of Theft of Property under section 484(A) of the California Penal Code for events that occurred on January 19, 1994. She was sentenced to 12 months probation and given the option of either paying a \$471.00 fine or performing 50 hours of community service. The record shows that on February 14, 1994 the court found that the applicant had completed her 50 hours of community service. *Id.*

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

(A) Conviction of Certain Crimes

(i) In General- [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.

....

(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). *Emphasis added.*

(B) Multiple criminal convictions.-Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more 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 applicant was convicted of two crimes involving moral turpitude, however these crimes do not make the applicant inadmissible under section 212(a)(2)(B) of the Act because the aggregate sentences to confinement as a result of her convictions were not five years or more. Furthermore, the events that led to the applicant's convictions in 1993 and 1994 for Theft of Property under section 484(A) of the California Penal Code occurred more than fifteen years before the date of the applicant's adjustment of status application and making her eligible for a waiver under section 212(h)(1)(A) of the Act. The AAO notes that 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). There has been no final decision made on the applicant's I-485 application, so the applicant, as of today, is still seeking admission by virtue of adjustment from her unlawful status.

The record reflects that the applicant has not been charged with any additional crimes since her conviction in 1994. The record also establishes that the applicant is a supportive mother to her daughter and has been helping her daughter and her daughter's family financially since her daughter lost her job. Counsel's Brief, dated February 24, 2006. This statement is supported by financial records and a letter from the applicant's daughter's former employer. The AAO finds that based on the applicant's lack of a criminal record since 1994 and her role as a supportive mother, the applicant has been rehabilitated and her admission to the United States would not be "contrary to the national welfare, safety, or security of the United States."

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. Further, the AAO finds that the favorable factors outweigh the unfavorable factors in the applicant's case so that a favorable exercise of discretion is warranted.

The unfavorable factor presented in the application is the applicant's convictions for Theft of Property in 1993 and 1994. The favorable factors include the applicant's family ties to the United States, the applicant's role as a supportive mother and grandmother, and the lack of any criminal record since 1994. Thus, the applicant has established that the favorable factors in her application outweigh the unfavorable factors.

In discretionary matters, the applicant bears the full burden of proving her 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 is approved.