



U.S. Citizenship
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FILE: [REDACTED] Office: LOS ANGELES

NOV 17 2009

IN RE: Applicant: [REDACTED]

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.

Perry Rhew
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 and the waiver application will be approved. The matter will be returned to the district director for continued processing.

The applicant, a native and citizen of Mexico, was found 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 does not contest the district director's finding of inadmissibility. Rather, he seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), based on extreme hardship to his U.S. citizen son, born in October 1978.¹

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 February 28, 2007.

In support of the appeal, counsel for the applicant submitted a brief, dated March 22, 2007, and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

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

(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, or

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

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) in the case of any immigrant it is established to the satisfaction of the Attorney General (Secretary) that -

¹ Although the record establishes that the applicant has other relatives that qualify for consideration for purposes of a waiver of inadmissibility under section 212(h) of the Act, as noted on the Form I-601, including a lawful permanent resident spouse, another U.S. citizen son, and a lawful permanent resident daughter, no evidence of what, if any, hardship they will encounter were the applicant's waiver of inadmissibility denied has been submitted. As such, hardship to these relatives can not be considered in the instant appeal.

- (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
- (2) The Attorney General (Secretary), in his discretion . . . has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

The record reflects inadmissibility under 212(a)(2)(A)(i)(I) of the Act based on the applicant's convictions for crimes involving moral turpitude. In 1982, the applicant was convicted of Assault with a Deadly Weapon, a violation of section 245(a) of the California Penal Code. He was sentenced to 180 days incarceration. In September 1990, the applicant was convicted of Receiving Stolen Property, a violation of section 496 of the California Penal code, based on a July 1989 offense. He was sentenced to 16 months incarceration. The applicant was also convicted, in March 1988, September 1990, June 1992 and October 1993, of Spousal/Cohabitant Abuse, a violation of section 273.5 of the California Penal Code. He was sentenced to 30 days, 90 days, 180 days, and 180 days imprisonment, respectively. The AAO has reviewed the statutes, case law and other documents related to these convictions, as well as the relevant precedent decisions from the Board of Immigration Appeals and the courts. The AAO concurs with the district director that the applicant has been convicted of multiple crimes involving moral turpitude and is therefore inadmissible under section 212(a)(2)(A)(i) of the Act.

The AAO finds the analysis as to whether the applicant's qualifying relatives would suffer extreme hardship if the applicant were removed to Mexico unnecessary, as a waiver of inadmissibility is available to the applicant under section 212(h)(1)(A) of the Act. The above-referenced crimes involving moral turpitude occurred more than fifteen years ago.² The record does not establish that

² The AAO notes that the applicant was convicted, in September 1998, of Battery, in violation of section 243(e)(1) of the California Penal Code, based on a July 1998 offense. He was sentenced to 86 days imprisonment. In September 1998, the applicant was again convicted of Battery, based on a June 1998 incident. He received 60 months probation. These convictions are not for crimes involving moral turpitude. See *Galeana-Mendoza v. Gonzales*, 465 F.3d 1054, 1059-60

the applicant's admission to the United States would be contrary to the national welfare, safety, or security of the United States. Moreover, the record indicates that the applicant has not been convicted of any crimes since 1998, more than eleven years ago, which indicates rehabilitation.

To further support the applicant's rehabilitation, a letter has been provided by numerous members of Narcoticos Anonimos (Narcotics Anonymous), stating that the applicant "is an active member of our group facility, he always comes to his meetings, and always participates in all class sections, he has an outstanding record of attendance, he is always on time, and ready for class sections...." *Letter from* [REDACTED], dated May 1, 2004.

In addition, the record establishes that the applicant's U.S. citizen son, [REDACTED] suffers from Schizoaffective Disorder, Depressed type. Since January 2004, he has been attending a court mandated outpatient treatment. As part of said treatment, he has specific rules and regulations he has to follow, and receives a combination of psychiatric, social and supportive interventions. Despite these interventions, the applicant's son remains "a psychiatrically fragile individual who relies on the emotional and sometimes even financial support that his parents and specifically [REDACTED] [the applicant] have provided to him.... It is my professional opinion...that if [REDACTED] were to lose his father, this would be devastating in his life and to his psychiatric, psychological and emotional conditions to the point that this might even trigger a re-hospitalization or a relapse into a prior level of psychiatric functioning, where [REDACTED] [the applicant's son] did not do well and got himself in trouble with the law...." *Letter from* [REDACTED] *Licensed Psychologist, County of San Bernardino Department of Behavioral Health, Conditional Release Program*, dated March 21, 2007. The applicant is "an essential part of his [Johnny's] treatment support system, and provides a stabilizing influence for him...." *Letter from* [REDACTED] *Clinical Therapist II, County of San Bernardino Department of Behavioral Health, Conditional Release Program*, dated September 26, 2006.

The record reflects that the applicant meets the requirements for a waiver of inadmissibility under section 212(h)(1)(A) of the Act. Further, the AAO notes that the applicant's U.S. citizen son would suffer hardship as a result of their separation from the applicant. However, the grant or denial of the waiver does not turn only on the mere passage of fifteen years of time. It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying

(9th Cir. 2006) ("We hold that, because it lacks an injury requirement and includes no other inherent element evidencing 'grave acts of baseness or depravity,' California Penal Code section 243(e) does not qualify as a crime categorically involving moral turpitude.").

circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. " *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the applicant's U.S. citizen and/or lawful permanent resident children and lawful permanent resident spouse, the hardships that the applicant's family would face if the applicant were not present in the United States, community ties, gainful and long-term employment prior to his retirement in 1998, payment of taxes, and the passage of more than 16 years since the violations that lead to the above-referenced convictions for crimes involving moral turpitude. The unfavorable factors in this matter are the applicant's multiple criminal convictions, unlawful entry to the United States and unlawful presence and employment while in the United States.

The crimes committed by the applicant were serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors, in particular his participation in Narcotic Anonymous and his important part in his son's life, outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved. The district director shall continue to process the applicant's adjustment of status application.