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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

H<sub>2</sub>

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES, CALIFORNIA  
[consolidated therein]

Date: NOV 18 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:

[REDACTED]

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

The record reflects that the applicant is a native and citizen of El Salvador who 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 record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his United States citizen spouse and children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on his qualifying relatives or that he had been rehabilitated; therefore, the District Director denied the Application for Waiver of Grounds of Excludability (Form I-601). *Decision of the District Director*, dated April 3, 2007.

On appeal, the applicant, through counsel, asserts that “[d]enial is based on improper application and interpretation of INA 212(h) and abuse of discretion.” *Form I-1290B*, filed April 30, 2007.

The record includes, but is not limited to, counsel’s brief, declarations from the applicant and his wife, a psychological evaluation on the applicant and his family, a letter from [REDACTED] regarding the applicant’s medical condition, and court dispositions for the applicant’s arrests and conviction. The entire record was reviewed and considered in arriving at a decision on the appeal.

In the present application, the record indicates that the applicant initially entered the United States without inspection on May 10, 1985.<sup>1</sup> On March 31, 1988, the applicant filed an Application for Temporary Resident Status as a Special Agricultural Worker (Form I-700). On August 7, 1990, the applicant was convicted of burglary of a vehicle, in violation of California Penal Code (CPC) § 459, and was sentenced to four (4) years probation, with nine (9) months being served in jail. On October 16, 1990, an Order to Show Cause (OSC) was issued against the applicant. On October 29, 1990, an immigration judge terminated the applicant’s deportation case. On December 20, 1991, the applicant’s Form I-700 was terminated. On January 22, 1992, the applicant filed an appeal of the termination of his temporary resident status. On March 11, 1992, the applicant was convicted of theft of property, in violation of CPC § 484(a), and was sentenced to two (2) years probation. On March 14, 2005, the AAO summarily dismissed the applicant’s appeal on the termination of his temporary resident status. On May 15, 2006, the applicant’s wife filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On January 3, 2007, the applicant filed a Form I-601. On April 3, 2007, the applicant’s Form I-130 was approved. On the same day, the District Director denied the applicant’s

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<sup>1</sup> The AAO notes that the applicant’s Form I-700 states he entered the United States without inspection on May 10, 1985; however, the OSC states the applicant entered the United States without inspection in June 1985.

Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relatives and rehabilitation.

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.

The District Director found the applicant inadmissible for having been convicted of two crimes involving moral turpitude. The applicant, through counsel, has not disputed this determination on appeal.

The record shows that on August 7, 1990, the applicant was convicted of burglary of a vehicle, in violation of CPC § 459, and was sentenced to four (4) years probation, with nine (9) months being served in jail. On March 11, 1992, the applicant was convicted of theft of property, in violation of CPC § 484(a), and was sentenced to two (2) years probation.

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 two crimes involving moral turpitude and is therefore inadmissible under section 212(a)(2)(A)(i) of the Act.

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

- (h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in [her] 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 [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 established to the satisfaction of the [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 [Secretary], in [her] discretion, and pursuant to such terms, conditions and procedures as [she] may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

The applicant's last conviction for theft of property occurred on March 11, 1992. The applicant filed a Form I-485 on May 15, 2006. The AAO notes that the applicant's conviction did not occur in excess of 15 years prior to his filing for adjustment of status; however, 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). The AAO notes that there has been no final decision made on the applicant's I-485 application filed on May 15, 2006, so the applicant, as of today, is still seeking admission by virtue of his application for adjustment of status. Therefore, the crime involving moral turpitude for which the applicant was found inadmissible occurred more than 15 years prior to the applicant's application for adjustment of status.

The AAO finds that the applicant meets the requirements for a waiver of his grounds of inadmissibility under section 212(h)(1)(A) of the Act, in that the applicant has not been convicted of any additional criminal charges since his last conviction on March 11, 1992. In a declaration dated December 23, 2006, the applicant states "[he] deeply regret[s] the choices that [he] made when [he] was younger, not only because now [his] family continues to suffer the consequences of those choices but also because [he] [has] a deep-rooted sense of respect for the laws of this great country." The applicant states he is "a completely changed man." In a declaration dated December 23, 2006, the applicant's wife states that when they "first started [their] relationship, [the applicant] got himself into trouble with the law on several occasions. Looking back at that time, [she] think[s] that this happened because [the applicant] was friends with people who seemed to go looking for trouble." The applicant's wife states "[she] noticed a dramatic change in [the applicant's] sense of responsibility when [their] daughter was born but the change in him was complete once he broke away from the friendships that he was keeping. Today, [the applicant] is a completely different man than the man [she] met almost 20 years ago and it is hard for [her] to imagine that he got himself into so much trouble in the past." The AAO notes that the applicant has several other arrests on his record from 1989 to 1992; however, there is insufficient evidence in the record showing that the applicant was convicted of any additional crimes in accordance with the meaning of a conviction found at section 101(a)(48) of the Act. Therefore, the lack of any additional convictions on the applicant's record further attests to his rehabilitation and the record of

proceedings does not establish that the admission of the applicant to the United States would be “contrary to the national welfare, safety, or security of the United States.”

Additionally, the AAO notes that the applicant’s United States citizen wife and children would suffer emotional and financial hardship as a result of their separation from the applicant. The applicant’s wife states the applicant “is an excellent father for [their] three children and his commitment to [their] family is extremely strong. [The applicant] works hard to make sure that [their] family is well-provided for and so that [she] can stay home with [their] children.” The applicant’s wife “does not have a significant work history.... She is basically under educated, unsophisticated, and completely lacking the work skills required to support herself and her children.” *Psychological evaluation by* [REDACTED] [REDACTED] page 7, May 25, 2007. The AAO notes that the applicant has been employed by Sistone Inc., since April 1, 1996, and he is currently an Operations Manager making \$1750 per week. Additionally, the AAO notes that the record establishes that the applicant is the primary source of support for his wife and children. *See U.S Individual Income Tax Returns for 2005, 2004, 2003, 2002, 2001, 2000, 1999, 1998, and 1997*<sup>2</sup>; *see also Wage and Tax Statements (Form W-2)*. The applicant’s daughter states that if the applicant were removed from the United States she “can’t provide for [her] brother, baby, or mother. [She] think[s] of ways for providing for [her] family but it’s not a lot of money.” *Psychological evaluation by* [REDACTED], *supra* at 7. The applicant’s wife states that “[t]he sadness and stress that [she] will suffer from having [the applicant’s] waiver denied is more than [she] can bear to even think about.” [REDACTED] states “[t]here is absolutely no doubt that deporting [the applicant] would cause extreme hardship to his spouse and three children, all of whom were born and raised in the United States. The family has never lived in El Salvador and do not have family or friends in El Salvador able to offer financial and housing support.” *Psychological evaluation by* [REDACTED], *supra* at 10. Additionally, [REDACTED] claims that “[f]orcing the children to live without their father would cause significant emotional damage and create the potential for the development of severe maladaptive behaviors. All three children’s future would be significantly and perhaps irreparable damaged if they were forced to return to El Salvador in order to preserve the family unit.” *Id.*

The favorable factors presented by the applicant are the hardship to his United States citizen wife and children, who depend on him for emotional and financial support; the applicant’s stable work history in the United States; the applicant’s history of paying his federal income taxes; and the lack of any other criminal convictions since his last conviction in 1992.

The unfavorable factors presented in the application are the applicant’s convictions for burglary of a vehicle on August 7, 1990, and theft of property on March 11, 1992. The AAO notes that the applicant has not been convicted of any criminal violations since his last conviction and the applicant’s crime occurred more than 15 years ago.

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<sup>2</sup> The AAO notes that the applicant’s filing status on his U.S. Individual Income Tax Returns for 1997 and 1998 was listed as “married filing joint return”; however, the applicant and his wife were not legally married until September 10, 1999.

While the AAO does not condone his actions, the applicant has established that the favorable factors in his application outweigh the unfavorable factors. The District Director's denial of the I-601 application is withdrawn.

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 is approved.