



U.S. Citizenship
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Services

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FILE:

Office: HONG KONG

Date:

OCT 01 2009

IN RE: Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(h)
of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)i

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Officer in Charge, Hong Kong. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved. The matter will be returned to the officer in charge for continued processing.

The applicant is a native and citizen of Taiwan. In May 2000, the applicant was convicted by the Kaohsiung Branch of the Taiwan High Court of violating The Statute of Controlling Guns, Ammunition and Knives, based on a May 1994 incident. He was sentenced to a term of one year and eight months imprisonment. The AAO has reviewed the statutes, case law and other documents related to this conviction, as well as the relevant precedent decisions from the Board of Immigration Appeals and the courts. The AAO concurs with the officer in charge that the applicant has been convicted of a crime involving moral turpitude and is therefore inadmissible under section 212(a)(2)(A)(i) of the Act. The applicant does not contest the officer in charge's findings. Rather, he 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 U.S. citizen father and lawful permanent resident mother.

The officer in charge 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 Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated April 20, 2007.

In support of the appeal, the applicant submits a letter, dated May 9, 2007, and referenced exhibits. In addition, a status inquiry letter from the applicant was received by the AAO on December 31, 2007. Finally, a status inquiry letter from the applicant's U.S. citizen father was received by the AAO on May 15, 2008. 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 -

- (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 AAO finds the analysis as to whether the applicant's qualifying relative would suffer extreme hardship if the applicant were removed to Taiwan unnecessary, as a waiver of inadmissibility is available to the applicant under section 212(h)(1)(A) of the Act. The above-referenced crime occurred more than fifteen years ago. The record does not establish that 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 the above-referenced incident in 1994, more than fifteen years ago, which indicates rehabilitation.

The applicant's U.S. citizen father provides a letter, contending that he and his wife, a lawful permanent resident, can not live without the applicant's assistance and support on a daily basis. As he asserts, "I used to live with my son [the applicant] and his family, my daughter in law who is very kind to me, she cook and took me to the doctor when I was ill, and the grandchildren they all took very good care of me too, I miss them very much.... [D]ue to my physical condition, I become very ill for the past two years, I have heart disease...arthritis and other physical problems, there is pain and no appetite, it seem bother me more and more, it is no longer good for me to live there, so I decided come back to U.S.A. and plus my wife suffered injuries to both legs by accident...her legs is still not function normally even after operation, we can not take care each other, we eagerly need my son and the family to be here to take care of us as soon as possible. I do not know how long I am going to live without properly care by family...." *Letter and Translation from* [REDACTED] dated May 14, 2007.

The applicant further elaborates on the hardships his U.S. citizen father and lawful permanent resident mother would encounter were his waiver denied. He asserts and documents that his father and mother suffer from numerous medical conditions and need the applicant and his family to care for them, as they do not get along with his sibling's wife. He further states that "In 1994, I did one thing illegally under compulsion, which made me feel regret for the rest of my life. I always blame myself and can't forgive myself. Now, I have to pay for what I have done before because my application for immigration to the USA was not approved just because of the wrong thing I did. As a result, my father may have no opportunity to have a family reunion with my wife and children. Currently, we live separately at two different places. All that we can do is to miss each other. I am really sorry about that...." *Letter from* [REDACTED] dated May 9, 2007.

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 father and lawful permanent resident mother would suffer hardship as a result of their continued 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 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 father, lawful permanent resident mother and U.S. citizen sibling, the hardships that the applicant's parents would face if the applicant were not present in the United States and the passage of more than 15 years since the violation that lead to the above-referenced conviction. The unfavorable factor in this matter is the applicant's criminal conviction.

The crime committed by the applicant is serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application 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 officer in charge shall continue to process the applicant's immigrant visa application accordingly.