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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: BALTIMORE

Date: SEP 01 2009

IN RE: [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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Uruguay 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.¹ The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States.

The director concluded 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. *Decision of the Director*, dated May 22, 2006.

On appeal, counsel for the applicant contends that the director applied an erroneous standard of hardship to the present application. *Statement from Counsel on Form I-290B*, dated June 19, 2006. Counsel asserts that the director failed to consider all elements of hardship to the applicant's relatives in aggregate. *Id.*

The record contains a brief from counsel; statements from the applicant, the applicant's wife, the applicant's sister-in-law, a coworker of the applicant's wife, and the applicant's pastor; reports on conditions in Uruguay; information on adjustment disorder and major depressive disorder; a psychological evaluation for the applicant's wife; a copy of the applicant's marriage certificate; a copy of the applicant's wife's birth certificate; copies of birth certificates of the applicant's children; documentation of the applicant's and the applicant's wife's employment; a copy of the applicant's passport and Form I-94 Departure Record; evidence of the applicant's F-1 status in the United States, and; documentation relating to the applicant's criminal convictions. The entire record was reviewed and considered in rendering this decision.

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

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

¹ In reviewing the record, the AAO determined that the record did not clearly show whether the applicant was also inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. On May 1, 2009 the AAO send a Request for Evidence (RFE) to obtain further evidence **regarding the applicant's F-1 student status.** In response to the RFE the applicant provided documentation to show by a preponderance of the evidence that he maintained a legal status in the United States, as he changed his status to F-1 and engaged in a consistent course of study. Thus, he is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

- (I) a crime involving moral turpitude (other than a purely political offense) 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).

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

- (h) The Attorney General [now Secretary, Homeland Security, “Secretary”] may, in his discretion, waive the application of subparagraphs (A)(i)(I) [or] (B) . . . 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
 - (1) (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 [now the Secretary of Homeland Security (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 record reflects that the applicant was convicted of three crimes, two of which are crimes involving moral turpitude. Specifically, the applicant was convicted of promoting prostitution in the fourth degree under New York Penal Law § 230.20 by the Queens County Court, New York on July 28, 1992, and Theft of Property (Lost) under New Jersey Statute Annon. § 2C: 20-6 by the Municipal Court, Hazlet, New Jersey on October 18, 1994. There is ample legal support that these offenses constitute convictions for crimes involving moral turpitude. *See, e.g., De Leon-Reynoso v. Ashcroft*, 293 F.3d 633, 635-37 (3d Cir. 2002); *Matter of Chouinard*, 11 I&N Dec. 839 (BIA 1966); *Lane v. Tillinghast*, 38 F.2d 231 (1st Cir. 1930). It is noted that the applicant's conduct that led to his conviction for theft occurred on or before April 27, 1994. The applicant pleaded guilty to aggravated unlicensed operation of a vehicle, for which he received a \$500 fine, yet the record does not support that this offense constitutes a crime involving moral turpitude.

The applicant was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude. The applicant does not contest his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on appeal.

In examining whether the applicant is eligible for a waiver, the AAO will assess whether he meets the requirements of section 212(h)(1)(A) of the Act. The applicant's most recent conviction for which he is inadmissible involved his conduct on or before April 27, 1994. As this conduct took place over 15 years ago, he meets the requirement of section 212(h)(1)(A)(i) of the Act.²

The record does not reflect that admitting the applicant would be contrary to the national welfare, safety, or security of the United States. Section 212(h)(1)(A)(ii) of the Act. While the applicant pleaded guilty to aggravated unlicensed operation of a vehicle, he performed the culpable conduct on or before February 19, 1996, over 13 years ago. The record does not show that the applicant has engaged in criminal activity since February 1996. There is nothing in the record that suggests that the applicant has exhibited a propensity for violent behavior or further criminal activity. The applicant has not been a public charge during his lengthy stay in the United States. Accordingly, the applicant has shown that he meets the requirement of section 212(h)(1)(A)(ii) of the Act.

The applicant has shown by a preponderance of the evidence that he has been rehabilitated. Section 212(h)(1)(A)(iii) of the Act. As discussed above, there is no evidence that he has engaged in unlawful activity since February 1996. The record shows that he has conducted himself well during the last 13 years, including engaging in steady employment, supporting his family, paying taxes, and engaging with his community through religious and volunteer activities. The record does not reflect

² It is noted that the applicant did not qualify for consideration under section 212(h)(1)(A) of the Act at the time that the district director issued his decision. The district director's analysis of extreme hardship under section 212(h)(1)(B) of the Act was appropriate, as that was the standard under which the application was properly adjudicated as of the date of the district director's decision.

that the applicant has a propensity to engage in further unlawful activity. Accordingly, the applicant has shown that he meets the requirement of section 212(h)(1)(A)(iii) of the Act.

Based on the foregoing, the applicant has shown that he is eligible for consideration for a waiver under section 212(h)(1)(A) of the Act.

In determining whether the applicant warrants a favorable exercise of discretion under section 212(h) of the Act, the Secretary must weigh positive and negative factors in the present case.

The negative factors in this case consist of the following:

The applicant has been convicted of multiple crimes, including promoting prostitution, theft of lost property, and aggravated unlicensed operation of a vehicle.

The positive factors in this case include:

The applicant has family ties to the United States, including his U.S. citizen wife, two U.S. citizen children, and other relatives; the applicant has not been convicted of a crime since 1996, in over 13 years; the applicant works and pays taxes; the applicant provides emotional and economic support for his U.S. citizen wife and children, and; the applicant participates with his community through religious and volunteer activities.

While the AAO cannot condone the applicant's prior criminal activity, the positive factors in this case outweigh the negative factors.

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 remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden that he merits approval of his application.

ORDER: The appeal is sustained.