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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

H2

[redacted]

FILE: [redacted] Office: CHICAGO, IL Date: JAN 0 4 2010

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act (INA), 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, Chicago, Illinois. The matter 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 Mexico 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 a crime involving moral turpitude. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with his wife in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated July 20, 1998.

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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

> (h) 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 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.

> (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 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 shows that in August 1989, the applicant was convicted of aggravated criminal sexual abuse and sentenced to two years probation. The district director found, and counsel concedes, that the applicant is inadmissible under section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), for having committed a crime involving moral turpitude. *Brief in Support of the Appeal of the Denial of an I-601 Waiver Filed by* at 6, undated.

The district director evaluated the applicant's waiver application for extreme hardship to a qualifying relative under section 212(h)(1)(B). However, as explained below, the AAO agrees with counsel that the applicant has shown that he is eligible for consideration of a waiver under section 212(h)(1)(A).

A section 212(h)(1)(A) waiver is dependent upon a showing that the activities for which the alien is inadmissible occurred more than fifteen years before the date of the alien's adjustment of status application; the alien's admission to the United States would not be contrary to the national welfare, safety, or security of the United States; and the alien has been rehabilitated. *See* section 212(h)(1)(A) of the Act, 8 U.S.C. § 1182(h)(1)(A). Once eligibility for a waiver is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

In this case, the applicant has shown that he is eligible for consideration of a section 212(h)(1)(A) waiver. 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). There has been no final decision made on the applicant's I-485 adjustment application, so the applicant, as of today, is still seeking to adjust his status to that of a legal permanent resident. The applicant's conviction occurred in 1989. Therefore, the activities for which the applicant is inadmissible occurred more than fifteen years before the date of the alien's application for adjustment of status.

In addition, the evidence indicates that the applicant has been rehabilitated and his admission to the United States would not be contrary to the national welfare, safety, or security of the country. The applicant successfully completed probation for his offense in 1991. *Certified Statement of Conviction.* The applicant is currently fifty-eight years old and has not had any further convictions for over twenty years. The applicant has been gainfully employed, has paid taxes while working in the United States, and has worked for the same employer since 1990. *Letter from* dated January 7, 1997; *Earnings Statements* dated September and October, 2009; *tax records.* In addition, he has been in a stable marriage with his wife, a naturalized U.S. citizen, for over thirty-five years. Moreover, the record shows the applicant and his wife are active members of their church and regularly volunteer their time. *Letter from* dated August 2,

2007. Based on this information, the AAO finds that the applicant has been rehabilitated and his admission is not contrary to the national welfare, safety, or security of the United States.

The AAO further finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

The adverse factor in this case is the applicant's conviction in 1989.

The positive factors in this case include: the applicant's significant family ties in the United States, including his U.S. citizen wife and child; the applicant has a stable record of employment; the applicant has not violated the immigration laws; and the applicant has not been convicted of any further offenses for over twenty years.

The AAO finds that, although the applicant's criminal offense is serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.