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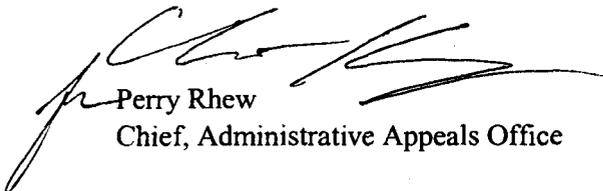
APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(h)

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

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 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 district 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 District Director*, dated September 6, 2006.

On appeal, counsel for the applicant contends that the applicant has shown that his wife will experience extreme hardship if the present waiver application is denied. *Statement from Counsel on Form I-290B*, dated October 4, 2006.

The record contains a brief from counsel; statements from the applicant's wife; copies of birth certificates for the applicant's children; a copy of the applicant's marriage certificate; letters from the applicant's acquaintances attesting to his good character and contributions to his community; tax and employment records for the applicant and his wife; copies of photographs of the applicant and his family, and; documentation relating to the applicant's criminal history. 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-
 - (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, that:

¹ The record further contains evidence that the applicant was charged with possession of a controlled substance (cocaine) in violation of California Health and Safety Code § 11350(a) for his conduct on or about February 18, 1990 in the County of Los Angeles. A conviction for this charge would render him inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a crime involving a controlled substance. However, in response to a request for additional evidence from the AAO, the applicant has submitted sufficient explanation and documentation to show by a preponderance of the evidence that he was not convicted of this charge.

- (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: receipt of stolen property under California Penal Code § 496(A) and driving a vehicle without the owner's consent under California Vehicle Code § 10851A, both for his conduct between December 10, 1989 and February 18, 1990, and; possession of a firearm - felon or addict under California Penal Code § 12021(A)(1) on December 16, 1999. It is noted that the applicant was charged under California Penal Code § 12021(A)(1) as a felon or addict due to his prior conviction under California Penal Code § 496(A).

There is ample support to show that the applicant's conviction for receipt of stolen property under California Penal Code § 496(A) constitutes a conviction for a crime involving moral turpitude. *See Wadman v. INS*, 329 F.2d 812, 814-15 (9th Cir. 1964); *Matter of Patel*, 15 I&N Dec. 212, 213 (BIA 1975), *aff'd*, *Patel v. INS*, 542 F.2d 796 (9th Cir. 1976).

In a decision denying the applicant's Form I-485 application to adjust his status to permanent resident, the district director stated that the applicant's conviction under California Penal Code § 12021(A)(1) constitutes a conviction for a crime involving moral turpitude. *Decision of the District Director Denying Form I-485 Application*, at 2, dated September 6, 2006. However, the

record does not support that the applicant's conviction for possession of a firearm as a felon constitutes a crime involving moral turpitude. *See Matter of Granados*, 16 I&N Dec. 726 (BIA 1979); *Matter of S-*, 8 I&N Dec. 344 (BIA 1959). Specifically, there is no indication or evidence in the record that the criminal court determined that the applicant intended to use the firearm to harm another individual or commit further criminal acts. *Id.*

The applicant pled guilty to driving a vehicle without the owner's consent under California Vehicle Code § 10851A. California Vehicle Code § 10851A criminalizes the temporary or permanent taking of a vehicle. There is ample support that a permanent taking of an automobile constitutes a crime involving moral turpitude. *See U.S. v Esparza-Ponce*, 193 F.3d 1133, 1135-37 (9th Cir. 1999). However, the BIA has found that a temporary taking of an automobile is not a crime involving moral turpitude. *See Matter of M-*, 2 I&N Dec. 686 (BIA 1946). In the present matter, the applicant has not submitted sufficient documentation relating to his conviction under California Vehicle Code § 10851A in order for the AAO to determine whether it was for a temporary or permanent taking of an automobile. Thus, the AAO is unable to determine if the applicant's conviction for driving a vehicle without the owner's consent constitutes a crime involving moral turpitude.²

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. As the applicant's most recent conviction for which he is inadmissible resulted from his acts between December 10, 1989 and February 18, 1990, the criminal conduct for which the applicant is inadmissible occurred over 15 years prior to his continuing application to adjust his status to permanent resident. Thus, he meets the requirement of section 212(h)(1)(A)(i) of the Act.

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 was convicted of possession of a firearm on December 16, 1999, he performed the culpable conduct approximately 10 years ago. The record does not show that the applicant has engaged in criminal activity since his conviction in 1999. There is nothing in the record that suggests that the applicant has exhibited violent behavior at any time. The applicant has not been a public charge since his arrival in October 1987. 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 criminal activity since his conviction in 1999. The record suggests that he has conducted himself

² If the applicant's conviction under California Vehicle Code § 10851A is not a crime involving moral turpitude, he has only been convicted of a single crime involving moral turpitude for receipt of stolen property under California Penal Code § 496(A), and his conviction under California Penal Code § 496(A) meets the "petty offense" exception found in section 212(a)(2)(a)(ii) of the Act. However, as noted above, the AAO is unable to conclude that the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to a lack of evidence regarding his conviction under California Vehicle Code § 10851A.

well during the last 10 years, including entering into a marriage, supporting his wife, having children and participating in their care and development, supporting his family economically, completing college-level education, and working with disadvantaged youth in his community. The record does not reflect that the applicant has a propensity to engage in further criminal 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 three crimes, including receipt of stolen property, driving a vehicle without the owner's consent, and possession of a firearm. The applicant was in the United States for approximately 17 years without a legal immigration status, prior to filing his Form I-485 application to adjust his status to permanent resident.

The positive factors in this case include:

The applicant has family ties to the United States, including his U.S. citizen wife and children; the applicant has not been convicted of a crime since 1999, in approximately 10 years; the applicant's wife and children would experience hardship if the applicant is compelled to depart the United States; the applicant supports his family economically, the applicant has completed college-level education, and the applicant has shown a propensity to engage with his community through working with disadvantaged youth.

The applicant's violation of criminal and immigration laws cannot be condoned. However, 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.