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U.S. Citizenship
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FILE:

Office: LOS ANGELES

Date:

JAN 21 2010

IN RE:

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.

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native of Russia and a citizen of Israel 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 committed crimes involving moral turpitude. 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 with his U.S. citizen spouse and U.S. citizen children.

The Field Office Director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on his qualifying relatives, his U.S. citizen wife and children, and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly.

On appeal, counsel asserts that the director's decision fails to articulate the reason the submitted evidence was insufficient to meet the extreme hardship standard. Counsel contends that this is an abuse of discretion.

In support of the application, the record contains, but is not limited to, a letter from the applicant's spouse, medical records, financial documentation, court dispositions, the applicant's marriage certificate, the applicant's children's birth certificates, and the applicant's spouse's naturalization certificate. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

(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.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(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).

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The director found the applicant inadmissible for having been convicted of three crimes involving moral turpitude. The director noted that the applicant was arrested for one additional crime involving moral turpitude for which there is no disposition in the record. The applicant has not disputed this determination on appeal.

The record shows that the applicant was convicted in the Municipal Court of Los Angeles, West Los Angeles Judicial District, on August 22, 1991, of theft of property in violation of section 484(a) of the California Penal Code (Cal. Penal Code), and sentenced to 24 months of summary probation under the terms that he serve one day in jail and pay a fine (). The record further shows that the applicant was convicted in the Municipal Court of Los Angeles, Criminal Judicial District, on July 20, 1993, of attempted grand theft in violation of Cal. Penal Code §§ 664 and 487, and sentenced to 36 months summary probation under the terms that he serve four days in jail and pay a fine or perform community service (). Finally, the record shows that the applicant was convicted in the Superior Court of California, County of Los Angeles, on December 13, 1994, of grand theft of property over \$400 in violation of Cal. Penal Code § 487(a), and sentenced to three years probation and nine days in jail ().

A Federal Bureau of Investigation (FBI) report based upon the applicant's fingerprints also reflects that on July 19, 1990 the applicant was arrested by the Santa Monica Police Department for petty theft/shoptlifting. The applicant has not submitted a court disposition related to this arrest.

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 director that the applicant has been convicted of three 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:

The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (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 . . .

Section 212(h)(1)(A) of the Act provides that the Secretary may, in her discretion, waive the application of subparagraph (A)(i)(I) of subsection (a)(2) if 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. An application for admission to the United States is a continuing application, and admissibility is determined on the basis of the facts and the law at the time the application is finally considered. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992).

Since the criminal conviction for which the applicant was found inadmissible occurred more than 15 years ago, it is waivable under section 212(h)(1)(A) of the Act. Section 212(h)(1)(A) of the Act requires that the applicant's admission to the United States not be contrary to the national welfare, safety, or security of the United States, and that he has been rehabilitated.

The evidence in the record to establish the applicant's eligibility under section 212(h)(1)(A) of the Act consists of the applicant's financial records, marriage certificate, children's birth certificates, and a letter from the applicant's spouse.

The record reflects that the applicant entered the United States on July 26, 1989 with a B2 visitor visa. On October 21, 1999, the applicant wed [REDACTED], who is now a naturalized U.S. citizen. The applicant and his spouse have a 10-year-old U.S. citizen child, [REDACTED], and a 7-year-old U.S. citizen child, [REDACTED]. The applicant's marriage certificate, tax returns, and Forms G-325A (Biographic Information Sheets) reflect that he is a dental technician who has had long-term employment with [REDACTED] in Los Angeles, California since June 1996. The record contains a supporting letter from the applicant's spouse, which states that she and her children are financially dependent on the applicant.

The AAO finds that the record indicates that the applicant's admission to the United States is not contrary to the national welfare, safety, or security of the United States and that he has been

rehabilitated, as required by section 212(h)(1)(A) of the Act. The applicant's theft convictions occurred 15 years ago and he has had no other convictions since 1994. He is the husband of a U.S. citizen spouse and two U.S. citizen children. The record shows that he has been gainfully employed in the United States with the same company since June 1996. Consequently, he has established that he merits a waiver under section 212(h)(1)(A) of the Act.

Furthermore, the applicant has established that the favorable factors in his application outweigh the unfavorable factors. The favorable factors are the applicant's work history, payment of taxes, and his family ties in the United States. The negative factors are his convictions for theft and period of unauthorized presence in the United States.

While the AAO cannot condone the applicant's criminal conviction and immigration violation, the AAO finds that the positive factors outweigh the negative and a positive exercise of discretion is appropriate in this case.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the application is approved.