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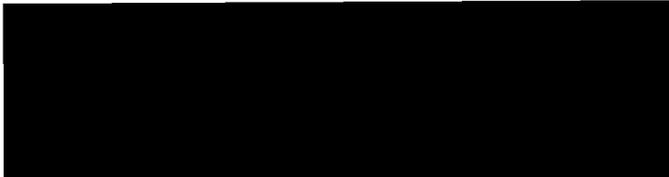
U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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FILE:

Office: PHILADELPHIA

Date:

MAR 29 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 District Director, Philadelphia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the waiver application will be approved.

The applicant, [REDACTED] is a native and citizen of the United Kingdom. He 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. citizens spouse and child.

The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel asserts that if the waiver is denied the applicant's spouse would suffer extreme hardship because she suffers from depression and post traumatic stress disorder. Counsel states that the applicant's spouse has a "strong family network" in the United States. Counsel states that "it has been more than a decade" since the applicant's convictions and he has "completely reformed his character." *See Brief in Support of Appeal*, dated October 25, 2006.

In support of the application, the record contains, but is not limited to, court dispositions, medical documentation, financial documentation, a letter from the applicant's church, an employment verification letter, and statements from the applicant, his spouse and in-laws. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

(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 multiple crimes involving moral turpitude. The applicant has not disputed this determination on appeal.

The record reflects that the applicant was convicted on September 30, 1983 of burglary and theft of a non-dwelling in violation of section 9(1)(b) of the Theft Act of 1968 and taking conveyance without authority in violation of section 12(1) of the Theft Act of 1968; on December 9, 1983 of theft in violation of section 1 of the Theft Act of 1968; on June 17, 1984 of going equipped for theft in violation of section 25 of the Theft Act of 1968; on January 22, 1987 of going equipped for burglary in violation of section 25 of the Theft Act of 1968 and driving a conveyance knowing it to have been taken without authority in violation of section 12 of the Theft Act of 1968; on November 29, 1988 of three counts of criminal damage in violation of section 1(1) of the Criminal Damage Act of 1971 and two counts of burglary with intent to steal from a non-dwelling in violation of section 9(1)(a) of the Theft Act of 1968; on August 2, 1989 of going equipped for theft in violation of section 25 of the Theft Act of 1968; on March 7, 1991 of making off without paying in violation of section 3 of the Theft Act of 1978 and two counts of taking conveyance without authority in violation of section 12(1) of the Theft Act of 1968; and on September 8, 1992 of theft in violation of section 1 of the Theft Act of 1968.

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 multiple crimes involving moral turpitude and is therefore inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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 . . . ; and

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

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 convictions for which the applicant was found inadmissible occurred more than 15 years ago, it can be waived 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 applicant states in his letter dated May 16, 2006, "When I committed the crimes I did I was a young fool! I could pass blame onto my upbringing, my peers of the time or even my surroundings but instead I take full responsibility and blame my only stupidity for the things I did." He further notes, "Since the last crime I committed, one of petty theft in 1992, I disassociated myself from everyone that was a part of that life and started full-time employment doing whatever work I could

find, having previously preferred a life on welfare.” The applicant, whose date of birth is November 23, 1968, was 23 years old at the time of his last conviction for a crime involving moral turpitude. Subsequently, he was convicted of one additional crime, possessing article with blade or point in public place, in violation of section 139(1) of the Criminal Justice Act of 1988. This offense is not a crime involving moral turpitude because it pertains to the simple possession of a weapon and lacks the intent to use the weapon against another individual. *See Matter of S*, 8 I&N Dec. 344, 346 (BIA 1959)(holding that carrying a concealed and deadly weapon with intent to use against the person of another is a crime involving moral turpitude because “[t]he essence of the offense is the carrying of the dangerous weapon with a base, evil and vicious intent to injure another.”)(citations omitted). The applicant was convicted of possessing an article with a blade or point in a public place on February 9, 1994; therefore, he was 25 years old at the time of his last criminal conviction. The applicant is now 41 years old and has resided in the United States for almost seven years. The applicant does not have a criminal history in the United States.

The record reflects that the applicant entered the United States on April 16, 2003 under the visa waiver program. He wed [REDACTED] a U.S. citizen, on July 7, 2003 in Lancaster, Pennsylvania. The applicant and his spouse have a five-year-old U.S. citizen child, [REDACTED]. The record contains a letter dated May 16, 2006 from [REDACTED] Numeorus Foundation, Center for Children’s Health Media, verifying that the applicant has been employed with the Center as a permanent, full-time, Web Developer since October 17, 2005. The record also contains a letter dated May 11, 2006 from [REDACTED] of Saint Albans Episcopal Church stating, “In a very short time [the applicant and his spouse] have become valued members of our parish family.”

Further, the record reflects that at the time of the applicant’s waiver application and appeal, his spouse was being treated for Major Depressive Disorder with postpartum onset. According to a May 15, 2006 letter form [REDACTED] Perinatal Behavioral Health, Christiana Care Health System, in November 2004 the applicant’s spouse was admitted for ten days to a psychiatric facility in Lancaster, Pennsylvania due to her severe depression with psychotic features. On appeal, the applicant submitted a psychological evaluation (dated October 17, 2006) of his spouse from [REDACTED] Dr. [REDACTED] diagnosed the applicant’s spouse as having Major Depressive Disorder with Psychotic Features and Post Traumatic Stress Disorder. The applicant’s spouse asserts in a letter dated May 16, 2006 that she would suffer hardship as a result of her mental health conditions if the applicant’s waiver is denied. She states that she needs the applicant’s “love and support” to raise her son. Counsel underscores the significance of this hardship factor on appeal.

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 last crime involving moral turpitude occurred over 15 years ago and he has had no other convictions since 1994. The applicant has resided in the United States for almost seven years and does not have a criminal history in the United States. The applicant is the husband of a U.S. citizen and the father of a U.S. citizen minor child. The applicant is involved in his community and he is gainfully employed. Therefore, the applicant has established that he satisfies the requirements for a waiver under section

212(h)(1)(A) of the Act.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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); *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996). The applicant has established that the favorable factors in his application outweigh the unfavorable factors. The favorable factors consist of the applicant's employment and his family and community ties in the United States. The negative factors are his multiple convictions for crimes involving moral turpitude. While the AAO cannot condone the applicant's criminal convictions, the AAO finds that the positive factors outweigh the negative, and a positive exercise of discretion is appropriate considering the facts of this particular 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 waiver application is approved.