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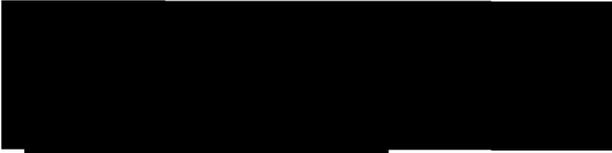
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE:



Office: MEXICO CITY (CIUDAD JUAREZ)

Date:

NOV 17 2010

IN RE:



PETITION: 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 PETITIONER:

SELF-REPRESENTED.

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Deputy District Director, Mexico City and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under 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. The applicant has five U.S. citizen children and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his family.

In a decision dated May 12, 2008, the acting deputy director found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of transferring counterfeit identification and conspiracy to transfer false U.S. documents. The acting deputy director found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative as a result of his inadmissibility and that he did not warrant a favorable exercise of discretion. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly.

In a brief dated June 8, 2008, counsel states that due to the applicant's diabetes and lack of sufficient health care in Mexico the applicant's health will deteriorate if he is not admitted to the United States causing his five children severe emotional distress.¹ Counsel states that the applicant is willing to submit medical documentation to support his claims.

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

¹ The AAO notes that the applicant appears to be represented; however the record does not contain a Form G-28, Notice of Entry of Appearance as Attorney or Representative. All representations will be considered but the decision will be furnished only to the applicant.

(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.)

In the recently decided *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a “realistic probability, not a theoretical possibility,” that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where, at the time of the proceeding, an “actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien’s own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude.” *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, “the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude.” 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists

of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709. However, this “does not mean that the parties would be free to present any and all evidence bearing on an alien’s conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself.” *Id.* at 703.

U.S. Citizenship and Immigration Services (USCIS) records indicate that on November 7, 1986 the applicant was arrested in Sacramento, California and charged with possession of counterfeit identification fraud. On March 18, 1987 he pled guilty to the charge and was sentenced to two years imprisonment. His two year sentence was suspended by eighteen months and he was sentenced to five years probation. USCIS records indicate that the applicant had nine social security cards and five lawful permanent resident cards in his possession.

On April 13, 1987 at the Federal Correctional Institution in Dublin, California the applicant was arrested and charged with conspiracy to transfer false U.S. documents. The applicant was sentenced to six months imprisonment for this crime.

The AAO notes that generally, any crime involving fraud is a crime involving moral turpitude. *Burr v. INS*, 350 F.2d 87 (9th Cir. 1965); *cert. denied*, 383 U.S. 915 (1966). However, in *Matter of Serna*, the BIA addressed whether simple, knowing possession of illegal documents constitutes morally turpitudinous conduct, and held, “the crime of possession of an altered immigration document with the knowledge that it was altered, but without its use or proof of any intent to use it unlawfully, is not a crime involving moral turpitude.” 20 I&N Dec. 579, 586 (BIA 1992). In *Omagah v. Ashcroft*, the Fifth Circuit addressed whether possession of illegal documents with an intent to use them was morally turpitudinous conduct and noted that it found reasonable “the BIA’s decision to classify, as moral turpitude, conspiracy to possess illegal immigration documents with the intent to defraud the government.” 288 F.3d 254, 261 (5th Cir. 2002). The AAO finds that it is reasonable to conclude from the applicant’s possession of nine social security cards and five lawful permanent resident cards that he intended to use them in some manner. The applicant has not disputed the finding that his convictions were for crimes involving moral turpitude.

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

(h) 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

The applicant's convictions were based on actions taken by the applicant in 1986 and 1987. The BIA held in *Matter of Alarcon* that "*admissibility* is determined on the basis of the facts and the law at the time the application is finally considered." 20 I.&N. Dec. at 562 (citations omitted, emphasis added). The issue of admissibility is the subject of the present appeal and will be determined based on the facts and law at the present time. Thus, as it has now been more than 15 years since the actions that made the applicant inadmissible occurred, the AAO finds that the applicant is eligible for a waiver under section 212(h)(1)(A) of Act.

The AAO notes that the record reflects that the applicant has not been charged with any crimes since his convictions in 1987. The record contains a statement from the applicant's son. The applicant's son states that he would like for his father to be in the United States with him and his sisters because they would like to find better treatment for their father's diabetes. He states that their father always cared for them and gave them the best he could. He states that it has been almost eight years since they have been with their father and they are hurting mentally.

The AAO notes that the record also contains a letter from the applicant's previous employer in the United States, Industrial Innovations, Inc., dated July 16, 1990. The letter states that the applicant had been an employee of Industrial Innovations for over twelve years and that during that time he had proven himself to be a capable worker, loyal employee, and a person of great personal integrity. The letter states that the company was fully aware of the applicant's criminal convictions, that the vice president of the company attended the applicant's trial, and that after the applicant served his sentence he returned to the company as an employee. The record also contains five letters submitted in 1989 from co-workers and friends attesting to the applicant's character as a hardworking, thoughtful, and kind person.

Thus, the AAO finds that the record establishes 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 United States." Thus, the record reflects that the applicant meets the requirements for waiver of his grounds of inadmissibility 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 applicant 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).

In evaluating whether section 212(h)(1) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional

significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. " *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant's criminal convictions in 1987.

The favorable factors in the present case are the applicant's extensive family ties to the United States, including five U.S. citizen children; the applicant's lack of a criminal record or offense since 1987; and, as indicated by letters from the applicant's son, employer, coworkers, and friends the applicant's good moral character and attributes as a good father, friend, and employee.

The AAO finds that the crimes committed by the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that 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 and the application is approved.