

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



H2

FILE: [REDACTED]

Office: LOS ANGELES

Date: SEP 03 2010

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:



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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink that reads "Michael Shumway".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The application is now before the AAO on a motion to reconsider. The motion will be denied and the previous decision of the AAO affirmed.

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 committed a crime involving moral turpitude, and section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having violated a law relating to a controlled substance. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his spouse, Valentina Magana, a naturalized U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his wife, their two U.S. citizen children, and his lawful permanent resident mother.

The applicant and his spouse were married in the United States on March 1, 1993. The applicant's spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf on August 5, 1996. The petition was approved on September 3, 1997. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on August 5, 1996. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) on October 17, 2003.

In a decision, dated November 10, 2005, the district director found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. On his Form I-601, the applicant sought a waiver of inadmissibility for his conviction for misdemeanor Assault with a Deadly Weapon Other Than a Firearm in violation of section 245(a)(1) of the California Penal Code (C.P.C.). Although not explicitly stated in the decision, the district director apparently determined that this conviction was a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

In this decision the district director also noted that the applicant was granted "diversion" of two charges (in 1988 and 1992 respectively) for Possession of a Narcotic Controlled Substance in violation of section 11350(a) of the California Health and Safety Code (C.H.S.C.), but stated that the "Service will only honor one diversion as an exception to Immigration benefits." The district director did not specify which of the two offenses would be "honored" and provided no further explanation. It appears that the district director determined that the applicant was inadmissible both for a crime involving moral turpitude (section 212(a)(2)(A)(i)(I) of the Act) and for violating a law relating to a controlled substance (section 212(a)(2)(A)(i)(II) of the Act).

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. Also, citing 8 C.F.R. § 212.7(d) and 18 U.S.C. §16(a), the district director found that the applicant's assault conviction was a "crime of violence" and noted that a favorable exercise of discretion would only be warranted if the applicant demonstrated that denial of his adjustment application would result in exceptional and extremely unusual hardship.

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

(i) In general.— . . .[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, or

(II) a violation of . . . any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

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

(h) The Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) or subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if—

....

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that—

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) [Prostitution] of such subsection or 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 State of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien had 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

Court documents in the record reflect that on November 2, 1988, the applicant pled guilty in the Municipal Court of Compton Judicial District, Superior Court of the County of Los Angeles, California to misdemeanor Assault with a Deadly Weapon Other Than a Firearm in violation of C.P.C § 245(a)(1). (Case No. A650033). On December 7, 1988, the applicant was sentenced to 120