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U. S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: VIENNA Date: **APR 08 2011**

IN RE: Applicant: [REDACTED]

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:

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,

fr Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge (“OIC”), Vienna, Austria, 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 and citizen of Romania 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. 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 lawful permanent resident spouse.

The OIC concluded that the applicant had failed to establish that his to admission would impose extreme hardship on his qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Denial Notice*, dated July 2, 2008.

On appeal, the applicant asserts that he has been rehabilitated since his conviction. The applicant further asserts that his spouse is suffering extreme hardship as a result of his inadmissibility. *Statement of Adrian Galgotzi*, undated.

In support of the application, the record contains, but is not limited to, letters from the applicant and his spouse, medical documentation, and the applicant’s conviction record. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (1) Criminal and related grounds. —
 - (A) Conviction of certain crimes. —
 - (i) In general. — Except as provided in clause (ii), any 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 record shows that on December 5, 1994 the applicant was convicted in the Maramures Law Court of bribery in violation of article 254, paragraph 1 of the Romanian Criminal Code. The applicant was sentenced to one year and one month imprisonment and payment of fines (File No. [REDACTED])

It is well established that the offense of bribery is a crime that involves moral turpitude. *See Matter of H*, 6 I&N Dec. 358, 361 (BIA 1954)(stating, "We believe the offense of bribery is a base and vile act which involves moral turpitude."); *Matter of V-*, 4 I&N Dec. 100 (BIA 1950)(stating that attempted bribery "has always been considered malum in se in both Anglo-American and Continental law and, therefore, involves moral turpitude."). Accordingly, the AAO finds that the applicant has been convicted of a crime involving moral turpitude and is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest his inadmissibility on appeal.

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 record reflects that the applicant has significant family ties in the United States, including his spouse, stepdaughters and father-in-law. *See Form I-601*. The applicant's spouse asserts that she is suffering financial and emotional hardships as a result of her separation from the applicant. She explains that she needs the applicant's presence in the United States to help her care for her parents who are elderly and "very sick." *Letter of Milica Bud*, undated.

The record contains a judgment from the Timis County (Romania) Law Court, Criminal Division, which provides:

The court finds that, 10 years passed since the execution of the convict's punishment, a term which is even longer than the rehabilitation term stipulated by art. 135 par. 1 Criminal Law; the court also finds that the other requirements of art. 137 Criminal Law are also met, respectively the fact that he was not convicted again during this period, he earns his living by honest means and proves an appropriate conducts both in his family and in the community and, he fully paid the judicial costs.

Judgment in Criminal Matters No. 350/PI, June 20, 2007 (File No. [REDACTED])

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 is the spouse of a lawful permanent resident and he has attested to his numerous family ties in the United States. The applicant has not been convicted of a violent or dangerous crime. His conviction was in December 5, 1994 which is over 16 years ago. The applicant's has received a judicial recognition of rehabilitation by a Romanian County Court. *See Judgment in Criminal Matters*. Accordingly, the applicant 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 include the applicant's family ties in the United States, the passage of 16 years since his conviction, and evidence of his rehabilitation. The negative factor is his criminal conviction. While the AAO cannot condone the applicant's criminal conviction, the AAO finds that the positive factors outweigh the negative and a favorable 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.