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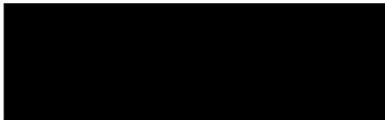
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U. S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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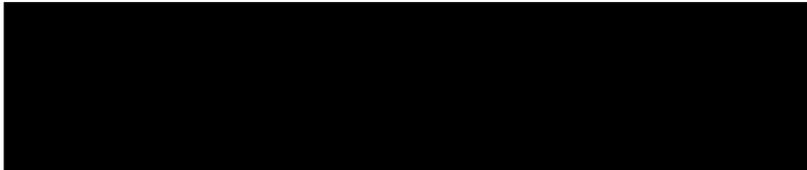


DATE: **APR 20 2011** Office: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Applicant: 

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:

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,

A handwritten signature in cursive script, appearing to read "Mark Shumway".

f/ Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, 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 Cuba 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 children.

The director concluded that the applicant failed to demonstrate that he has been rehabilitated and his bar to admission would impose extreme hardship on a qualifying relative. The director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated August 16, 2008.

On appeal, counsel asserts that the applicant has submitted evidence of his rehabilitation. Counsel further asserts that the applicant has established extreme hardship to his qualifying relatives if he is denied admission to the United States. *Appeal Brief*, undated.

In support of the application, the record contains, but is not limited to, financial documentation, supporting letters from the applicant's friends and employer, birth certificates for the applicant's children and spouse, the applicant's marriage certificate, and country condition reports on Cuba. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

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.

...

(B) Multiple criminal convictions.—Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

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 reflects that on June 10, 1980, the applicant testified in a sworn statement that he was convicted of two offenses in Cuba. He stated that he was arrested on September 20, 1975 for deserting from military service and was sentenced to one year in prison. He further testified that he was arrested again on June 8, 1977 for larceny. The applicant explained that he opened his manager's desk drawer with a pick and took 2,568 pesos from the desk. He stated that he was sentenced to 12 years in prison for this offense. See *Sworn Statement of* [REDACTED] dated June 10, 1980.

The AAO notes that neither of the applicant's convictions is categorically a crime involving moral turpitude. The BIA has held that desertion from the armed forces of the United States in time of war is not an offense involving moral turpitude. *Matter of S-B-*, 4 I. & N. Dec. 682 (BIA 1952). Furthermore, the BIA has held that a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended. *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973). The applicant's conviction records are not in the record, and we are unaware of the Cuban law under which the applicant was convicted. However, we need not address this issue further as the record reflects that the applicant is inadmissible under section 212(a)(2)(B) of the Act for multiple criminal convictions as a consequence of having been convicted of two offenses for which the aggregate sentence was 13 years.

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 subparagraphs (A)(i)(I), (B), (D), and (E) 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 convictions for which the applicant was found inadmissible occurred more than 15 years ago, his inadmissibility 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 AAO notes that in denying the waiver application, the director determined that the record is unclear and contains too many inconsistencies. The director noted that the applicant filed his 2007 and 2006 taxes as single instead of married. The director indicated that it is unknown whether the applicant is separated from his spouse, or if he filed his taxes as single to gain a tax benefit. The AAO has considered the basis of the director's determination, and finds that it does not appear to have any significant bearing on the applicant's waiver application, as the applicant is eligible for consideration under section 212(h)(1)(A) of the Act. Furthermore, the applicant and his spouse have been married since July 1984, and they have four children together. Even if the applicant is now separated from his spouse, he still has numerous family ties in the United States. Further, we do not have any concrete evidence that the applicant knowingly filed his tax returns as a single individual to gain a tax benefit.

The director further noted discrepancies regarding the applicant's involvement with the United States Army:

It is not known when the applicant served in the United States Army. The membership card from the American Legion was issued by Post 0297. A search using the internet was unable to find the American Legion Post 0297; however, American Legion Post [REDACTED]

I-601 Decision at 3.

The AAO agrees that the applicant's claims of military service are inconsistent. In a brief filed with

the waiver application, counsel asserts that the applicant "has served in the Armed Forces of the United States as evidenced by an enclosed certificate of appreciation from the U.S. Army . . ." *I-601 Brief*, undated. The applicant submitted a Certificate of Appreciation from the U.S. Army awarded to the applicant for his "outstanding service to the Nation as a United States Army Soldier." On appeal, counsel explains that the applicant was not on active military duty, but received a certificate from the U.S. Army "because of his past monetary contributions to them." *Appeal Brief*. The AAO finds that counsel's statements regarding the applicant's military service are misleading. However, the applicant has provided other evidence of rehabilitation, and his military service is largely immaterial to our determination of his eligibility for a waiver.

On appeal, counsel references a U.S. Department of State country condition report on the human rights practices in Cuba, and asserts that the applicant's family members would suffer extreme hardship if they had to relocate with the applicant to Cuba. *Appeal Brief*, undated. The record reflects that the applicant was paroled into the United States from Cuba on September 23, 1980. He has significant family ties in the United States, including his spouse, [REDACTED], 28-year-old daughter, [REDACTED], 27-year-old son, [REDACTED], 26-year-old daughter, [REDACTED] and 17-year-old son, [REDACTED]. The applicant's spouse and children are natives and citizens of the United States. The AAO acknowledges that if the applicant's family members decided to relocate to Cuba to maintain family unity, they would face hardship. The U.S. Department of State's country specific information on Cuba provides that the country is a "totalitarian police state which relies on repressive methods to maintain control. These methods include intense physical and electronic surveillance of both Cuban citizens and foreign visitors." *U.S. Department of State, Cuba, Country Specific Information*, dated April 29, 2010.

Counsel asserts that the applicant has shown his rehabilitation by maintaining long-term employment and through numerous letters of recommendation. The record contains the applicant's Social Security Statement, which reflects that the applicant has maintained steady employment since his entry into the United States. The applicant submitted an employment verification letter from Adell Plastics attesting to the applicant's employment with the company since February 16, 1981. The letter provides that the applicant is a "trustworthy, reliable and accurate employee." *Letter from Denise Hicks, Materials Manager, Adell Plastics, Inc.*, dated July 21, 2008. The applicant also submitted a letter from his direct supervisor stating that the applicant is a "diligent, hard-working and dedicated employee." *Letter from James Waterfield, Jr.*, dated July 8, 2008. The record contains additional letters from the applicant's friends attesting to his good moral character. See *Letter from Terri Raber*, dated July 21, 2008; *Letter from Ken Yarbrough*, dated July 22, 2008; and *Letter from Eric Plitt*, undated.

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 U.S. citizen and the father of four U.S. citizen children. The applicant has demonstrated that his family members would suffer hardship if they relocated with him to Cuba to maintain family unity. The supporting statements in the record attest to the applicant's long-term and gainful employment with [REDACTED] and his good moral character. The applicant has not been convicted of a violent or dangerous crime. Nor has he been convicted of any offenses in the United States since his residence in this country during the last 30 years. 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 family and community ties in the United States and the passage of 33 years since his last conviction. The negative factors are the applicant's convictions in Cuba for deserting from military service and larceny, and the aforementioned inconsistencies in the record.

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 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.