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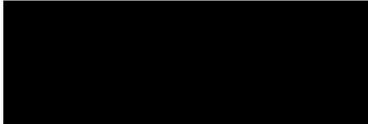
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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

H2



FILE:



Office: CALIFORNIA SERVICE CENTER Date:

MAR 29 2011

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,

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.

The applicant is a native and citizen of El Salvador 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 been convicted of crimes involving moral turpitude. The applicant's spouse and two children are U.S. citizens. She seeks a waiver of inadmissibility in order to reside in the United States.

The director found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Director's Decision*, at 3, dated August 4, 2008.

On appeal, counsel asserts that the applicant is eligible to file for a waiver under section 212(h)(1)(A) of the Act and she meets the requirements of this waiver provision. *Brief in Support of Appeal*, at 4, dated September 3, 2008.

The record includes, but is not limited to, counsel's brief, school letters and the applicant's I-601 waiver application. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant was convicted of petty theft under Section 488 of the California Penal Code on September 23, 1985, May 13, 1986 and November 18, 1987. The AAO notes that petty theft is a crime involving moral turpitude in California. *Castillo-Cruz v. Holder*, 581 F.3d 1154, 1160 (9th Cir. 2009).¹

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

- (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.

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 As the AAO has found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act for multiple petty theft convictions, it will not address whether her November 18, 1987 conviction for presenting false identification to a police officer involves moral turpitude.

(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 . . .

In examining whether the applicant is eligible for a waiver, the AAO will assess whether she meets the requirements of section 212(h)(1)(A) of the Act. The record reflects that the activity resulting in the applicant's convictions occurred prior to November 18, 1987. The AAO notes that an application for admission or adjustment of status is considered 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) (citations omitted). The date of the Form I-485 decision is the date of the final decision, which in this case, must await the AAO's finding regarding the applicant's eligibility for a waiver of inadmissibility. As the activities for which the applicant is inadmissible occurred more than 15 years before the date of her adjustment of status "application", she meets the requirement of section 212(h)(1)(A)(i) of the Act.

The record does not reflect that admitting the applicant would be contrary to the national welfare, safety, or security of the United States. The record reflects that the applicant is self-employed in the area of house cleaning. *Applicant's 2007 Federal Tax Return, Schedule C*, at 1, undated. There is no indication that the applicant has ever relied on the government for financial assistance. The record reflects that the applicant was sentenced to three years probation for each of her theft convictions. She also received one day in jail, was ordered to take a theft awareness class, and was ordered to pay fines and penalties. The record is not clear as to whether she completed all of these obligations, however, there is no evidence that she has been convicted of a crime since November 18, 1987. In addition, there is no indication that the applicant is involved with terrorist-related activities. Accordingly, the applicant has shown that she meets the requirement of section 212(h)(1)(A)(ii) of the Act.

The applicant has shown by a preponderance of the evidence that she has been rehabilitated per section 212(h)(1)(A)(iii) of the Act. As discussed above, there is no evidence that she has been

convicted of a crime since November 18, 1987. The record includes numerous letters reflecting that the applicant is trustworthy, responsible, loyal, hardworking and kind. The record does not reflect that the applicant has a propensity to engage in further criminal activity. Accordingly, the applicant has shown that she meets the requirement of section 212(h)(1)(A)(iii) of the Act.

Based on the foregoing, the applicant has shown that she is eligible for consideration for a waiver under section 212(h)(1)(A) of the Act.

The granting of the waiver is discretionary in nature. The favorable factors include the applicant's U.S. citizen spouse and children, hardship to her family, payment of taxes, lack of a criminal record since November 18, 1987, and evidence of good moral character.

The unfavorable factors include the applicant's criminal convictions, unauthorized period of stay and unauthorized employment.

Although the applicant's criminal history is serious and cannot be condoned, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors.

In discretionary matters, the applicant bears the full burden of proving her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.