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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**



PUBLIC COPY



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DATE: Office: PHILADELPHIA, PA
MAY 12 2011

FILE: [Redacted]

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:



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 black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Jamaica 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 mother is a lawful permanent resident. She seeks a waiver of inadmissibility in order to reside in the United States.

The field office 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. *Field Office Director's Decision*, dated April 28, 2008.

On appeal, counsel states that the field office director erred in concluding that the applicant did not document extreme hardship imposed on a qualifying relative. *Form I-290*, received May 30, 2008.

The record includes, but is not limited to, counsel's brief, the applicant's mother's statement, the applicant's statement and several statements in support of the applicant. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant was convicted on June 12, 1995 of retail theft under Title 18, § 3929(a)(1) of the Pennsylvania Consolidated Statutes and she received a \$300 fine, and she was convicted of the same offense in relation to a September 7, 1995 incident and was required to pay court costs of \$1.50.¹

Title 18, § 3929(a)(1) of the Pennsylvania Consolidated Statutes states:

(a) Offense defined.--A person is guilty of a retail theft if he:

- (1) takes possession of, carries away, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored or offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the possession, use or benefit of such merchandise without paying the full retail value thereof;

The Board of Immigration Appeals (BIA) has found that retail theft in violation of Title 18, § 3929(a)(1) of the Pennsylvania Consolidated Statutes is a crime involving moral turpitude. *In re Jurado-Delgado*, 24 I&N Dec. 29 (BIA 2006). As such, the AAO finds that the applicant committed crimes involving moral turpitude and she is therefore inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act.

¹ The record indicates that the applicant's conspiracy to commit retail theft charge, in relation to the September 7, 1995 incident, was withdrawn.

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) (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 most recent conviction occurred on or before September 7, 1995, the date of her second arrest. 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 working as a food service manager. There is no indication that the applicant has ever relied on the government for financial assistance. The record reflects that the applicant was required to pay a fine and court costs. The record is not clear as to whether she complied with this. The record reflects that the applicant was also convicted on February 15, 1995 of disorderly conduct under Title 18, § 5503(a)(4) of the Pennsylvania Consolidated Statutes. There is no evidence that she has been arrested since September 7, 1995. 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 the applicant has been arrested since September 7, 1995 and she has conducted herself well since that time, including caring for her mother and siblings, and working in the food service industry. 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 lawful permanent resident mother, hardship to her family in the event the waiver is not granted, her good moral character as evidenced by several statements of support, and her lack of a criminal record in over 15 years.

The unfavorable factors include the applicant's criminal convictions, entry without inspection, 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 his 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.