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



H₂

[Redacted]

Date: JUL 03 2012

Office: LOS ANGELES, CA

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:

[Redacted]

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,

for Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Peru who was found to be inadmissible under 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 director stated that the applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel contends that U.S. Citizenship and Immigration Services (USCIS) summarily dismissed the submitted evidence and failed to consider in the aggregate the hardship factors of the applicant's spouse's family ties to the United States, the applicant's providing health benefits for his family members, the applicant's wife's lack of family ties to Peru, poor country conditions in Peru, the financial impact to the applicant's wife in remaining in the United States without the applicant or in relocating to Peru with him, the applicant's wife's health problems, and the emotional impact on the applicant's wife and children if the waiver is denied. Counsel asserts that USCIS abused its discretion for not providing an explanation for its decision and for not properly considering the hardship factors.

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

(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.

The submitted criminal records reflect that in July 1993 the applicant was convicted of theft in violation of Cal. Penal Code § 484(a). The judge suspended the applicant's sentence in which the applicant was to serve two years of probation and 180 days in jail. On January 9, 1996, the applicant committed perjury in violation of Cal. Penal Code § 118. On February 27, 2001, the applicant was convicted of the offense and was ordered to serve three years of probation and 96 days in jail.

The director found that the applicant was convicted of crimes involving moral turpitude. As the applicant has not disputed inadmissibility on appeal, and the record does not show the finding of inadmissibility to be erroneous, we will not disturb the finding of the director.

The record establishes that the applicant has been convicted of crimes involving moral turpitude for which the applicant is rendered inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is under section 212(h) of the Act. That section 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

(ii) the alien has been rehabilitated . . .

Section 212(h)(1)(A) of the Act provides that the Attorney General may, in his 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. Since the activities for which the applicant is inadmissible occurred in 1993 and 1996, which is more than 15 years ago, they are waivable under section 212(h)(1)(A)(i) of the Act. An application for admission is a "continuing" application, and admissibility is adjudicated on the basis of the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992).

Section 212(h)(1)(A)(ii) and (iii) 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 the applicant establish his rehabilitation.

Evidence in the record to establish the applicant's eligibility under section 212(h)(1)(A)(ii) and (iii) of the Act consists of the applicant's declaration, his wife's declaration, letters from his employer, his welding certificate, his prior ownership of real property, a letter from his pastor, letters from acquaintances, and a letter from his son and daughter. The applicant stated in the declaration dated December 11, 2009 that he regrets having made bad decisions and has changed - he no longer drinks and has become a productive citizen and church member. The pastor's letter dated July 17, 2009 stated that the applicant has been a church member for 12 months and is of good moral character. The two letters by the applicant's acquaintances praise the applicant, stating that he is hardworking and responsible. The applicant's employer stated in the letter dated July 29, 2009 that the applicant is a shear operator earning \$15.87 per hour. The applicant's wife described the applicant as hardworking, responsible, and a good husband and father in her declaration dated December 11, 2009. The applicant's son and daughter commend their father's character in their letter dated November 27, 2009. The record shows that the applicant was convicted of driving under the influence in 1993 and 1995, falsely representing himself to a peace officer in 1995, and driving on a suspended license in 2000. However, in view of the evidence in the record before the AAO, which shows that the applicant has not committed any crimes since 2000, and has been a productive citizen and church member, we find the applicant has demonstrated that his 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)(ii) and (iii) of the Act.

In *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996), the Board of Immigration Appeals (Board) stated that once eligibility for a waiver is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion in favor of the waiver. Furthermore, the Board stated that:

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

Id. at 301.

The AAO must then, “[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. “ *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the criminal convictions for theft, perjury, driving under the influence in 1993 and 1995, falsely representing himself to a peace officer in 1995, and driving on a suspended license in 2000, his entry into the United States without inspection in 1987, subsequent period of unlawful presence, and any unauthorized employment. The favorable factors in the present case are the letters commending the applicant's character and the passage of 11 years since his last criminal conviction. The AAO finds that the crimes and immigration violations committed by the applicant are serious in nature, nevertheless, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has now met that burden. Accordingly, the appeal will be sustained and the waiver application will be approved.

ORDER: The appeal is sustained.