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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, D.C. 20529-2090
**U.S. Citizenship
and Immigration
Services**



H2



Date: JUL 30 2012

Office: MIAMI, FLORIDA

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 large, stylized 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, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that 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 been convicted of a crime involving moral turpitude. The applicant, through counsel, seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen mother as well as his fiancée and her daughter.

The Field Office Director denied the Form I-601 application for a waiver, finding that the applicant failed to establish extreme hardship to a qualifying relative. *See Decision of the Field Office Director*, dated August 5, 2010.

On appeal, counsel asserts that the applicant has been convicted of only one crime that dates over 15 years, and that the documentary evidence shows that the applicant's qualifying relative will suffer extreme medical and financial hardship should the present waiver application be denied. *Brief from Counsel*, received September 2, 2010.

The record contains, but is not limited to: briefs from counsel; letters of support; identity, medical, and criminal history documents; and country conditions information.¹ The entire record, with the exception of the Spanish-language documents, was reviewed and considered in rendering this decision.

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

(i) ... 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.

¹ The AAO notes that the record contains some documents in the Spanish language. 8 C.F.R. § 103.2(b)(3) states:

Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

As certified translations have not been provided for all foreign-language documents, as required by 8 C.F.R. § 103.2(b)(3), the AAO will not consider these untranslated documents in support of the appeal.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

...

(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 September 18, 1995, the applicant was convicted of grand theft in the 3rd degree pursuant to Florida Statutes § 812.014(2)(c)(6), for which adjudication of guilt was withheld as the applicant was placed on supervised probation for one year. The record also shows that he was ordered to serve 10 hours of community service, to make restitution in the amount of \$500 to the victim, and assessed costs totaling \$255.

The record further shows that on October 6, 1995, the applicant was convicted of driving under the influence (DUI) pursuant to Florida Statutes § 316.193(2)(a)(1)(a), for which he was ordered to six months probation, a suspension/revocation of his driver's license for six months, to serve 50 hours of community service, to attend DUI-related programs, and assessed costs totaling \$583.75.

The Field Office Director indicated that the applicant also was cited for multiple traffic offenses for "Driving While License Suspended", resulting in some convictions and others *nolle prossed*. Upon examination of the documentation of the applicant's criminal and motor vehicle-related conviction history, it is noted that bench warrants were issued on December 1 and December 16, 1999, for Driving

While License Suspended – with Knowledge and Driving While License Suspended – 1st conviction, respectively. It also is noted that the applicant was cited for other noncriminal motor vehicle infractions. Accordingly, there is ample documentation in the record to support that the applicant's last criminal non-motor vehicle-related conviction occurred on or about September 18, 1995.

The applicant does not contest whether he has been convicted of a crime involving moral turpitude, or whether he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. However, the waiver application will be approved as a matter of discretion under section 212(h)(1)(A) of the Act.

Section 212(h) of the Act provides, in pertinent part:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana 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 . . .; and
- (2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

...

The applicant's conviction for grand theft in the 3rd degree occurred on September 18, 1995. As his culpable conduct took place over 15 years ago, he 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. Section 212(h)(1)(A)(ii) of the Act. Although the record shows that the applicant was convicted of a DUI; demonstrating dangerous behavior on the part of the applicant that could affect his personal safety as well as the safety of others, the record shows that the DUI conviction occurred over 16 years ago and that he has not been convicted of any other DUIs. And, although he was arrested on November 30, 2003, and charged with violating Fla. Stat. § 784.021(1)(a), aggravated assault with a deadly weapon; on December 22, 2003, the charge was dropped. Additionally, his criminal non-motor vehicle-related conviction involved a property crime. Further, the record does not show that the applicant has been convicted of any criminal activity since his last conviction in 1995, and he has not been a public charge since his arrival on March 23, 1995. Accordingly, the applicant has shown that he meets the requirement of section 212(h)(1)(A)(ii) of the Act.

The applicant has shown by a preponderance of the evidence that he has been rehabilitated. As discussed above, there is no evidence that he has been convicted of any criminal activity since his conviction in 1995. The record shows that he has conducted himself well by: providing emotional and economic support to his elderly U.S. citizen mother, fiancée, and fiancée's daughter; serving as his mother's primary caregiver; working; and satisfying his child support/alimony obligations. As of April 2010, he had worked for the same employer for over five years. Accordingly, the applicant has shown that he meets the requirement of section 212(h)(1)(A)(iii) of the Act.

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

In determining whether the applicant warrants a favorable exercise of discretion under section 212(h) of the Act, the Secretary must weigh positive and negative factors in the present case.

The negative factors in this case consist of the following:

The applicant has been convicted of a DUI and a theft offense, one that calls into question his moral character. The applicant has remained in the United States for a lengthy period without a legal immigration status. The applicant's last arrest was in 2003 and involved an aggravated assault with a deadly weapon.

The positive factors in this case include:

The applicant's elderly mother has been diagnosed with a degenerative condition and suffers from other physical conditions, for which she has received treatment in the United States. The record supports that she would endure significant hardship should the applicant depart. The applicant has substantial family ties to the United States, including his mother, biological son, fiancée, and

fiancée's daughter. The applicant has not been convicted of a crime since 1995, and in 15 years, he works and provides emotional and economic support for his U.S. citizen elderly mother, fiancée, and fiancée's daughter. The AAO has considered the fact that the applicant's son resides in Kentucky with his ex-wife. However, it is evident that he has fulfilled his child support/alimony obligations to his son and ex-wife.

While the applicant's criminal activity and violation of U.S. immigration and motor vehicle laws cannot be condoned, the positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden that he merits approval of his application.

ORDER: The appeal is sustained.