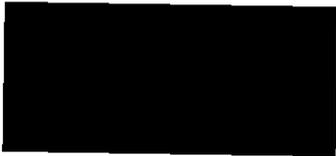


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H2

DATE: NOV 01 2012 Office: MOSCOW, RUSSIA FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h), 8 U.S.C. § 1182(h) of the Immigration and Nationality Act.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

Michael Shumway
for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Moscow, Russia, 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 Lithuania 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 U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h) in order to reside in the United States with his family.

The field office director found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated January 28, 2011.

On appeal, the applicant asserts that he is rehabilitated from the time that he committed his crimes. *Applicant's Statement*, undated.

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

The record reflects that the applicant was convicted on May 18, 1999 of acquisition or handling of the property obtained by criminal means in violation of Article 228, paragraph 2 of the Criminal Code of the Republic of Lithuania. The applicant was sentenced to two years imprisonment and his sentence was suspended. As the applicant has not contested his inadmissibility on appeal, and the record does not show that determination in regard to this crime to be in error, we will not disturb the finding of inadmissibility for the aforementioned crime under section 212(a)(2)(A) of the Act.¹

Section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1181(a)(2)(A)(i)(II), states, in pertinent part:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

....

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance... is inadmissible.

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

¹ The AAO notes that the applicant was convicted on the same date of engagement in prohibited business in violation of Article 162 of the Criminal Code of the Republic of Lithuania. As the applicant has not disputed that his other conviction is a crime involving moral turpitude, we will not address whether this is a crime involving moral turpitude.

The Attorney General 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

(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 he 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 in February and April 1994. An application for admission 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). As the activities for which the applicant is inadmissible occurred more than 15 years ago, he can be considered for a waiver under 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 has worked consistently in various positions since 1989. There is no indication that the applicant would rely on the government for financial assistance. The applicant has not engaged in criminal activity since 1994 and he has not been convicted of any crimes since his March 18, 1999 convictions. In addition, there is no indication that the applicant is involved with terrorist-related activities. 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 per section 212(h)(1)(A)(iii) of the Act. As discussed above, the record reflects that the applicant has not engaged in criminal activity since 1994 and he has not been convicted of any other crimes since. The record includes letters from several people who conduct business with the applicant and he has been described as practicing the highest level of integrity, as one who meets his financial

obligations, and as a professional. The record does not reflect that the applicant has a propensity to engage in further criminal activity. 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.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. *See* section 212(h)(2) of the Act, 8 U.S.C. § 1182(h)(2). In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The AAO must “balance 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.” *Matter of Mendez-Morales*, 21 I&N Dec. 296, 300 (BIA 1996) (citation omitted).

The adverse factors in the present case are the applicant’s convictions. The favorable factors are the applicant’s U.S. citizen mother, hardship to his mother and his rehabilitation. The AAO finds that the crimes committed by the applicant are serious in nature; nevertheless, when taken together, we find the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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 met that burden. Accordingly, the appeal will be sustained and the waiver application will be approved.

ORDER: The appeal is sustained. The application is approved.