



U.S. Citizenship  
and Immigration  
Services

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H2

Date: NOV 01 2012

Office: ATLANTA, GA

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]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[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, Atlanta, Georgia, 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 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 (CIMT). The director indicated 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 was not eligible to apply for a waiver of inadmissibility because he had more than one CIMT conviction, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel challenges the director's determination that the applicant was not eligible to apply for a section 212(h) waiver. Counsel asserts that even though the language of section 212(a)(2)(A)(i)(I) of the Act refers to aliens who have been convicted of "a" CIMT, this does not signify that an alien who has multiple CIMT convictions is not eligible to apply for a waiver. Counsel argues that the applicant demonstrated extreme hardship to his wife if the waiver is denied.

We will find address the finding of inadmissibility.

The applicant was found to be inadmissible under section 212(a)(2)(A) of the Act, which 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.

On December 21, 1993, the applicant was arrested for and charged with possession of burglary tools and two counts of grand larceny. On June 24, 1994, the applicant pled guilty to an amended charge of petit larceny and was ordered to serve 30 days in jail and pay a fine. On July 5, 1994, the applicant was arrested for and charged with attempted grand larceny and tampering. On July 5, 1994, he pled guilty to the charges and was sentenced to serve five months in jail. On July 27, 1994, the applicant pled guilty to possession of burglary tools and an amended charge of petit larceny, and was ordered to serve 30 days in jail and pay a fine.

The director found the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of CIMTs. 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.

We agree with counsel that the applicant is eligible to apply for a waiver of inadmissibility. The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is found 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
- (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 . . .

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. An application for admission or adjustment is a "continuing" application, 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). Since the most recent activities which make the alien inadmissible occurred on July 5, 1994, which is more than 15 years ago, his crimes are waivable under section 212(h)(1)(A) of the Act.

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 a letter from his employer commending his character; the letter dated May 28, 2009, by the applicant's wife in which she asserted that her husband has changed for the better as he has a close relationship with her and their children, and contributes to their household income; the affidavits by the applicant's mother-in-law and brother-in-law in which they asserted that the applicant is a responsible father and husband; the affidavit by the applicant's friend dated April 25, 2009 declaring that the applicant is reliable, a good worker, and concerned about his family and friends; and the applicant's acknowledgement of his wrongdoing and the positive change in the direction in his life in the letter dated May 28, 2009. We believe that the applicant's evidence demonstrates 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-Morales*, 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. The AAO must then, “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.” *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the criminal convictions for possession of burglary tools, petit larceny, attempted grand larceny, and tampering, as well as any unauthorized employment and unauthorized presence in the United States. The favorable factors in the present case are the affidavits by the applicant’s spouse, mother-in-law, brother-in-law, friend, and employer; and the passage of 18 years since the criminal convictions which have made the applicant inadmissible to the United States. The AAO finds that the crimes of which the applicant committed 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. 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.