



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: FEB 05 2013

Office: SAN BERNARDINO, CA

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 handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Bernardino, 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 Mexico 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 failed to demonstrate extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel contends that the director erred in determining that the applicant failed to establish extreme hardship to his qualifying relative spouse and children. Counsel asserts that the applicant has a close relationship with his lawful permanent resident spouse and U.S. citizen children and if the applicant lived in Mexico while his family lived in the United States, the separation would be detrimental to the applicant's wife and children. Counsel contends that the director failed to provide a meaningful analysis of the facts; and consider the age of the applicant at the time of his entry to the United States, the length of his residence here, hardship to his children in adjusting to life in Mexico, as well as the impact relocation to Mexico will have on their education; conditions in Mexico such as widespread poverty, difficulty in obtaining employment, and prevalence of violent crime; and lack of family ties to Mexico. Lastly, counsel argues that the director failed to consider in the aggregate the emotional and financial hardship to the applicant's family members if the waiver was 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 August 25, 1986, the applicant was convicted of grand theft from person in violation of section 487.2 of the California Penal Code. The judge ordered that the applicant serve 36 months of probation and 9 months in jail. On April 12, 1995, the applicant was convicted of receiving known stolen property in violation of Cal. Penal Code § 496(a), and sentenced to serve 30 days in jail, and was convicted of violation of section 14601(a) of the Cal. Vehicle Code for driving a motor vehicle when his driving privilege was suspended or revoked for reckless driving. The judge ordered that the applicant serve 30 days in jail, 15 days in jail and pay a fine, or 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, grand theft from person and receiving known stolen property. 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 applicant is eligible to apply for a waiver of inadmissibility 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 for which the alien is inadmissible occurred on April 12, 1995, 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 dated August 30, 2010 from his sons and daughters attesting to their father's positive influence in their life and his good character, a letter dated August 30, 2010 from the applicant's wife in which she commends her husband as a good role model for their children, and letters from friends praising the applicant's work ethic, leadership, honesty, and parenting skills. Income tax records for 2009 show the applicant as having

his own electrical contracting business and as financially supporting his family. In view of the evidence in the record, we find 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-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. 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 grand theft from person, receiving known stolen property, driving recklessly, driving on a suspended license, and driving without a license, as well as any unauthorized employment and unauthorized presence in the United States. The favorable factors in the present case are the letters by the applicant's spouse, children, and friends affirming his good character; the applicant's close relationship with his family members and any hardship they would experience if the waiver were denied; the applicant's ownership of his business; and the passage of 15 years since the convictions for CIMTs. We acknowledge that the crimes committed by the applicant are serious in nature. However, when we consider the favorable factors in the present case together, they 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.