(b)(6)

U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

Date: JUL 17 2013 Office: NEW YORK

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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, and was dismissed by the Administrative Appeals Office (AAO) on appeal. The matter is now before the AAO on a third motion. The motion will be granted, and the underlying application will be approved.

The applicant is a native and citizen of China 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 committed crimes involving moral turpitude. The applicant was further found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having "falsely testified" before an immigration officer. The applicant seeks a waiver of inadmissibility in order to remain in the United States with his U.S. citizen spouse and children.

The District Director concluded that although the applicant had established that extreme hardship would be imposed on his qualifying relatives, he did not demonstrate that he merits a favorable exercise of discretion. The District Director denied the waiver application accordingly. *See Decision of the District Director*, dated November 27, 2009.

The AAO determined that the applicant was not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation due to statements made in connection with his asylum application. The AAO found on the applicant's second motion that although the applicant's children with would experience extreme hardship given the applicant's inadmissibility, he did not establish he merited a favorable exercise of discretion and dismissed the appeal. *See AAO Decision,* March 25, 2010.

On this third motion, counsel asserts the applicant feels true remorse for his actions, and after he was convicted in 1999, he has reformed his character. Statements from the applicant and letters from family and friends, educational documents, and documentation of charitable and community-related work are submitted on motion.

In support of the waiver application, the record contains, but is not limited to, the documents listed above, financial documentation, country condition reports, court records, family photographs, the applicant's marriage certificate, the applicant's spouse's naturalization certificate, the applicant's children's birth certificates, attestations from the applicant, his fiancée, and his spouse, psychological evaluations, and supporting letters from the applicant's father, siblings, niece and nephews. The entire record has been reviewed in rendering a decision on the motion.

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.

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

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(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.) On appeal, the AAO found that the applicant's 1999 convictions for violations of 18 U.S.C. § 1546 and 18 U.S.C. § 1028 (Case No. 99CR 592 DAB), constituted convictions for crimes involving moral turpitude. The applicant does not contest this finding on this third motion. The AAO therefore affirms that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for his convictions for the sale of fraudulent alien registration cards in violation of 18 U.S.C. § 1546, and for transferring, using and manufacturing fraudulent identification documents in violation of 18 U.S.C. § 1028.

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . if –

. . . .

(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) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

The AAO notes in its prior decision the applicant had established his children with would experience extreme hardship given his inadmissibility.[1] *See AAO Decision,* April 26, 2013. Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

> We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra,* is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

> The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of

[1] Counsel erroneously claims the AAO found his spouse, parents, and children would experience extreme hardship as defined by section 212(h) of the Act, when in fact the AAO only found his children with would experience such hardship.

> this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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 BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

Counsel provides sufficient evidence on this present motion to demonstrate the applicant merits a favorable exercise of discretion. The applicant states he feels genuine remorse for the actions which led to his convictions. He adds although he takes full responsibility for his actions, he has tried to atone for them by cooperating with prosecutors to the fullest extent possible. A letter from the U.S. Attorney's office indicates the applicant's cooperation was prompt, consistent, and substantial, in that it led to more than two dozen arrests and the seizure of counterfeit immigration documents and the equipment used to produce those documents. The U.S. attorney's office further relays that the agent involved in the investigation described the applicant as the best source he had ever worked with in terms of responsiveness, diligence, and willingness to follow directions. Moreover, the applicant has submitted evidence of his continuous positive involvement with the community, including efforts with his Buddhist temple and fundraising events with his daughter's school. Additional letters submitted on motion indicate the applicant is thought of as a person of good moral character by friends and family members. Those favorable factors outweigh his employment without authorization, his 1999 document fraud convictions, and the activities underlying those convictions.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The motion is granted, and the underlying application is approved.