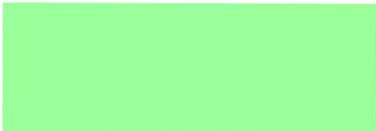




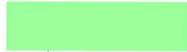
**U.S. Citizenship
and Immigration
Services**

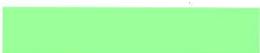
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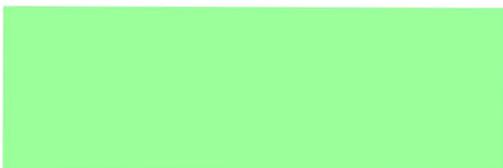
Office: LOS ANGELES, CA

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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,

f. Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a fifty-three-year-old native and citizen of Honduras 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 is the spouse and parent of U.S. citizens. She seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in conjunction with an adjustment of status application, in order to remain in the United States as a lawful permanent resident with her husband and children.

The Field Office Director concluded that the applicant had failed to demonstrate that the bar to her admission would result in extreme hardship to her qualifying relatives, as required under section 212(h) of the Act, and denied her Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision*, dated November 8, 2011.

On appeal, counsel asserts that the applicant had demonstrated that a bar to his admission would cause extreme hardship to her U.S. citizen spouse and child for purposes of a section 212(h) waiver. *See Form I-290B, Notice of Appeal or Motion*, dated December 8, 2011.

The record of evidence includes, but is not limited to, counsel's briefs; the applicant's statement; statements of the applicant's husband and minor daughter; statements of the applicant's other family members and friends; marriage certificate; birth certificate of the applicant's children; the applicant's tax returns and social security earnings statements; background articles on country conditions in Honduras; and the applicant's criminal records. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

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.

The record reflects that the applicant last entered the United States without inspection on or about April 24, 1992, and thereafter remained in the country unlawfully. The applicant is a beneficiary of an approved visa petition filed by her U.S. citizen husband and seeks to adjust her status to a lawful permanent resident under sections 245 and 245(i) of the Act. The record indicates that the applicant has been arrested and convicted on several occasions since her entry into the United States. Criminal records indicate that the applicant was convicted of misdemeanor theft of property in violation of section 484(a) of the California Penal Code (CPC) on October 12, 1994. She was sentenced to 12 months of probation. On January 29, 1995, she was arrested for burglary and subsequently convicted on January 31, 1995 of misdemeanor theft of property under CPC § 484(a).

She was sentenced to 24 months of probation and a suspended jail term of three days, and was ordered to pay \$100 in restitution. On April 3, 1995, her probation was revoked and a bench warrant was issued. On April 22, 2003, probation in the same case was reinstated and she was sentenced to seven days imprisonment and a \$250 contempt fine. On February 6, 1996, the applicant was arrested for burglary and possession of forged notes. She was subsequently convicted on May 30, 1996 of possession of forged notes under CPC § 475 and was sentenced to 36 months of probation, three days of imprisonment and a \$200 fine.

As counsel does not dispute the finding of inadmissibility against the applicant under section 212(a)(2)(A)(i)(I) of the Act of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude, based on the applicant's convictions above, and the record does not show that finding of inadmissibility to be in error, the AAO will not disturb the determination.

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

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 –

(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.

Pursuant to section 212(h)(1)(A) of the Act, the ground of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act may be waived in the exercise of discretion, if the applicant demonstrates that the activities for which she is inadmissible occurred more than 15 years before the date of her application for a visa, admission, or adjustment of status. In addition, the applicant must

demonstrate that her admission to the United States is not contrary to the national welfare, safety, or security of the United States, and that she has been rehabilitated in order to qualify for a waiver under this provision. Although the director did not address the issue, we consider the applicant's eligibility for a waiver under section 212(h)(1)(A) of the Act under the AAO's *de novo* authority.

An application for admission is a "continuing" application, and admissibility is 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). Accordingly, a review of the record demonstrates that the applicant's last criminal conduct leading to her inadmissibility under section 212(a)(2)(A)(i)(I) of the Act occurred more than 15 years ago on or about February 6, 1996, when she was arrested for possession of forged notes. The applicant has some other subsequent arrests and convictions that are less than 15 years old.¹ However, a review of the record and the applicable statutes and codes indicate that those convictions do not render the applicant inadmissible. They therefore do not bar the applicant from demonstrating threshold eligibility for a waiver under section 212(h)(1)(A) of the Act. We now consider whether the applicant's admission to the United States would be contrary to the national welfare, safety, or security of the United States, and if she has been rehabilitated.

The AAO finds that the record indicates that the applicant's admission to the United States is not contrary to the national welfare, safety, or security of the United States and that she has been rehabilitated, as required by section 212(h)(1)(A) of the Act. It further shows that refusal of her admission would result in hardship to her family. The applicant is 53 years old and has continuously resided in the United States since 1992. She has significant family ties in the United States, including her U.S. citizen husband, a native of Mexico, to whom she has been married for nearly eighteen years. Moreover, the applicant has a seventeen-year-old daughter and a lawful permanent resident adult son and daughter, as well as a grandchild in the United States. The applicant owns her home in the United States with her husband, and manages rental units on their property. The record contains a statement from the applicant, indicating her remorse for past criminal conduct, which she indicates has been a source of embarrassment and distress to her family. The supporting statement from the applicant's husband in the record attests to the applicant's rehabilitation and close ties in the United States. He asserts that the applicant has rehabilitated herself since her 1996 conviction for possession of forged notes and her 2001 conviction for a municipal code violation relating to sale of unstamped cigarettes. He indicates that the latter conviction was for conduct that the applicant did not know was a violation of law. The applicant's husband contends that his wife made a conscious effort to change her life and focus on caring for her marriage and family, which had been threatened by the applicant's criminal conduct. He states that the applicant is his best friend and that she is the first and only person that has understood him. The applicant's husband asserts that he cannot bear being separated from the applicant or their minor daughter, but also cannot imagine having to relocate with their daughter to his wife's native country of Honduras, due to the increased

¹ Criminal enforcement records indicate that the applicant has been arrested approximately six times between 1994 and 2001. In addition to the three convictions which rendered her inadmissible, as previously set forth, the applicant was arrested on May 3, 1998 for making unauthorized paper money, although no complaint was filed. On June 7, 2000, the applicant was convicted of street sales of goods in violation of section 42.00(b) of the Los Angeles Municipal Code. She was sentenced to 24 months of probation and a \$500 fine. She was found guilty of violating her probation and was sentenced to 20 days on September 17, 2001. On that day, she was also convicted of sale of unstamped cigarettes in violation of section 30474 of the Revenue and Taxation Code of California following a July 12, 2001 arrest.

criminal violence and poverty there. The record also contains letters from the applicant's older son and daughter, [REDACTED] from a prior relationship. They indicate, as corroborated by the applicant, that the applicant had been physically abused by their natural father and suffered much at his hands when she resided in Honduras. [REDACTED] also indicates the abuse carried over to them as well and that the applicant did everything to get them out of the abusive relationship. He also contends that his mother is remorseful and regrets for her past criminal conduct.

Furthermore, the applicant has established that the favorable factors in her application outweigh the unfavorable factors. The negative factors are her convictions. The favorable factors include the applicant's rehabilitation; the applicant's family ties in the United States; the hardships her citizen husband and children would face if she was refused admission; and the passage of 16 years since her last conviction for an offense involving moral turpitude on May 30, 1996, and over a decade since her last arrest in July 2001 for a municipal code violation. Her convictions also did not involve violent or dangerous conduct.

While the AAO cannot condone the applicant's criminal convictions and immigration violations, the AAO finds that the positive factors outweigh the negative and a favorable exercise of discretion is appropriate in this case.

As we have found the applicant eligible for a waiver under section 212(h)(1)(A) of the Act, we find no purpose will be served in considering her eligibility for a waiver under subsection (h)(1)(B) of the same provision.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.