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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

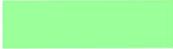


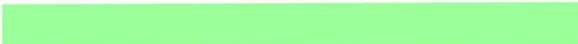
U.S. Citizenship  
and Immigration  
Services



Date: **MAY 07 2013**

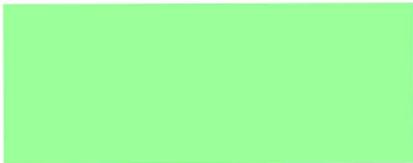
Office: LIMA

FILE: 

IN RE: 

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, Lima, Peru, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant, a native and citizen of Chile, was found 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 a crime involving moral turpitude. 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 U.S. citizen spouse and son.

In a decision dated September 10, 2012, the Field Office Director concluded that the applicant did not establish that his U.S. citizen spouse would suffer extreme hardship and the application for a waiver of inadmissibility was denied.

On appeal, counsel for the applicant states that the applicant has meet the rehabilitation section of the statute as the activities that led to his conviction occurred more than 15 years prior to the application for admission. Moreover, counsel states that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility.

In support of the waiver application, the record includes, but is not limited to legal arguments by counsel for the applicant, a letter from the applicant, letters in regards to the applicant's education and moral character, a letter from the applicant's spouse, letters from family members of the applicant's spouse, medical information concerning the family, letters regarding the applicant's spouse's employment, documentation pertaining the couple's son, documentation concerning the applicant's spouse's community ties, and documentation concerning the applicant's immigration and criminal history.

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 considered in rendering a decision on the appeal.

The applicant is inadmissible under section 212(a)(2) of the Act, which provides, in pertinent part:

(A)(i) Except as provided in clause (ii), any 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, or...  
is inadmissible.

The record demonstrates that the applicant was convicted of passing fraudulent checks in the First Civil Court, Criminal Division, Valparaiso, Chile for activities that occurred prior to [REDACTED]. The applicant's initial conviction was dated [REDACTED] where he was sentenced to five years and one day of imprisonment. The applicant sought a reduction in his sentence, which was granted by the court on [REDACTED]. His sentence was reduced to 541 days of imprisonment in accordance with Article 30 of the Chilean Penal Code. He was also ordered to serve one year of probation, which he completed on [REDACTED]. The U.S. Department of State found that the applicant's conviction was a crime involving moral turpitude under section 212(a)(2)(A)(i) of the Act and the applicant does not contest his inadmissibility on appeal.

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

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; or

...

Section 212(h)(1)(A) of the Act provides that the Secretary may, in her 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 to the United States is 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).

Since the activities that are the basis for the applicant's criminal conviction occurred more than 15 years ago, prior to May 8, 1991, he is eligible for a waiver under section 212(h)(1)(A) of the Act. Section 212(h)(1)(A) 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 he has been rehabilitated. 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 statement from the applicant's spouse, a statement from the applicant, statements from family members of the applicant and his spouse, educational and employment records for the applicant, a certification from the court concerning the applicant's completion of the terms of his probation. The record does not indicate any arrests or convictions for the applicant that are unrelated to crime that led to the applicant's inadmissibility.

In view of the record, which shows that the applicant's only conviction pertains to criminal activities performed by the applicant prior to May 8, 1991, that the applicant has not been arrested for or convicted of any other crimes, that the applicant has sought and obtained an education and employment, that the applicant is the husband of a U.S. citizen and the father of young U.S. citizen son, and that numerous individuals have attested to the moral character of the applicant, the AAO finds that the applicant has provided sufficient evidence to demonstrate 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.

Demonstrating 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, is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Id.* 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.

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." See *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 300 (BIA 1996) (citations omitted).

The adverse factor in the present case is the applicant's conviction for passing fraudulent checks, which became final on March 13, 2008, but related to activities that occurred in 1991. The applicant has no other known criminal or immigration violations. The favorable factors in the present case are the applicant's family ties to the United States, the hardship to his U.S. citizen spouse and child if the application were denied, and the applicant's attempts to seek an education and move forward with his life in a positive way. The AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors.

The crime committed by the applicant is serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

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

**ORDER:** The appeal is sustained.