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U. S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
*Office of Administrative Appeals*  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

Date: NOV 14 2013

Office: HOUSTON, TX

FILE: [REDACTED]

IN RE: [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]

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,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Houston, Texas, 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 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 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 remain in the United States with his U.S. citizen children and lawful permanent resident wife.

In a decision, dated March 11, 2013, the field office director found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act as a result of a 1997 conviction for tampering with a government record. The field office director found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, the applicant submits additional evidence of hardship.

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.)

The record shows that on November 14, 1996, in [REDACTED] Texas, the applicant was charged with Tampering With Government Record. On January 1, 1997, he was convicted of this charge and sentenced to two years probation and a \$500 fine.

At the time of the applicant's conviction, Texas Penal Code § 37.10 stated:

(a) A person commits an offense if he:

- (1) knowingly makes a false entry in, or false alteration of, a governmental record;
- (2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record;
- (3) intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record;
- (4) possesses, sells, or offers to sell a governmental record or a blank governmental record form with intent that it be used unlawfully;

(5) makes, presents, or uses a governmental record with knowledge of its falsity; or

(6) possesses, sells, or offers to sell a governmental record or a blank governmental record form with knowledge that it was obtained unlawfully.

The complaint in the applicant's case states that, on or about November 11, 1996, the applicant unlawfully, with the intent that it be used unlawfully, possessed a governmental record, namely a standard of proof of liability form, with the intent to defraud and harm another.

In *Matter of Serna*, 20 I&N Dec. 579 (BIA 1992), the Board held that "possession of an altered immigration document with the knowledge that it was altered, but without its use or proof of any intent to use it unlawfully, is not a crime involving moral turpitude." Given that the applicant was convicted for not only possessing a fraudulent government record, but also intending to use it to defraud and harm another, his conviction is a crime involving moral turpitude. *See, e.g., Jordan v. DeGeorge*, 341 U.S. 223, 232 (1951), ("[t]he phrase 'crime involving moral turpitude' has without exception been construed to embrace fraudulent conduct"); *Omagah v. Ashcroft*, 288 F.3d 254, 262 (5<sup>th</sup> Cir. 2002) (finding that crimes that do not involve fraud, but that include "dishonesty or lying as an essential element" also tend to involve moral turpitude); *see also Itani v. Ashcroft*, 298 F.3d 1213, 1216 (11<sup>th</sup> Cir. 2002) ("Generally a crime involving dishonesty or false statement is considered to be one involving moral turpitude."). Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude. The applicant does not contest his inadmissibility on appeal.

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) . . . 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 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 criminal activities for which the applicant was found inadmissible occurred more than 15 years ago, it is waivable 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.

The record reflects that the applicant has resided in the United States since 1980 and his only arrest was in 1996. The applicant has no other criminal record. The applicant has significant family ties in the United States, including two children, six grandchildren, and his lawful permanent resident wife of 32 years.

The record contains letters of support from the applicant's spouse, children, and church. These letters attest to the applicant as a loving and supportive husband and father, a person who is very close to his family, and as someone who has been involved with his community church for 10 years.

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 he has been rehabilitated, as required by section 212(h)(1)(A) of the Act. Consequently, he has established that he merits a waiver under section 212(h)(1)(A) of the Act.

Furthermore, the applicant has established that the favorable factors in his application outweigh the unfavorable factors. The favorable factors include the applicant's rehabilitation, the applicant's family ties in the United States and the passage of 17 years since his last conviction. The negative factors in the applicant's case are his conviction and periods of unauthorized presence and employment in the United States.

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 positive exercise of discretion is appropriate in this case.

We note that in her statement, the applicant's spouse asserts her concerns over her husband being

barred from the United States for ten years. In *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012), the Board of Immigration Appeals (BIA) held that an applicant for adjustment of status who left the United States temporarily pursuant to advance parole under section 212(d)(5)(A) of the Act did not make a departure from the United States within the meaning of section 212(a)(9)(B)(i)(II) of the Act. In the applicant's case, on September 16, 2002, he obtained advance parole under section 212(d)(5)(A) of the Act, temporarily left the United States pursuant to that grant of advance parole, and was paroled into the United States on January 6, 2004. In accordance with the BIA's decision in *Arrabally*, the applicant did not make a departure from the United States for the purposes of section 212(a)(9)(B)(i)(II) of the Act. Accordingly, the applicant is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act and no ten year bar applies in his case.

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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.