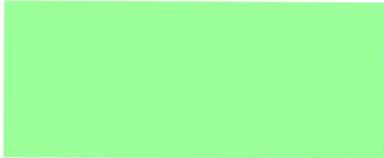


(b)(6)



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**

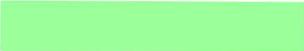


Date: **NOV 15 2013**

Office: NEBRASKA SERVICE CENTER

FILE: 

IN RE:

Applicant: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act (the 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Guyana who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Act for having been convicted of a crime involving moral turpitude. The applicant is a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act in order to reside with his wife and children in the United States.

The director found that although the applicant established extreme hardship to a qualifying relative, the applicant does not warrant a favorable exercise of discretion. The director denied the application accordingly.

On appeal, counsel contends the applicant has taken positive steps towards rehabilitation and merits a favorable exercise of discretion. Counsel submits additional evidence in support of the waiver application.

The record includes, but is not limited to, the following documents: a copy of the marriage certificate of the applicant and his wife, Ms. [REDACTED] indicating they were married on September 12, 1986; a letter from the applicant; a letter from an alcohol rehabilitation counselor; statements from Ms. Hoodho; letters from the applicant's children; a letter from Ms. [REDACTED] physician; letters from a psychiatrist; copies of prescriptions; statements from the Social Security Administration; numerous letters of support; a copy of the U.S. Department of State's Country Specific Information for Guyana and other background materials; transcripts, orders, and other documentation from proceedings before the immigration judge and the Board of Immigration Appeals (BIA); copies of criminal records; copies of court records; copies of photographs of the applicant and his family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2)(A) of the Act states in pertinent part:

(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, or
- (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of Title 21),

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 released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States...

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), (D), and (E) of subsection (a)(2) of this section and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if -

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General 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 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

In this case, the record shows that in August 2002, the applicant, a lawful permanent resident, was convicted of harassment in the second degree in violation of New York Penal Law § 240.26 and criminal contempt in the second degree in violation of New York Penal Law § 215.50, and sentenced to sixty days imprisonment. The record further shows that in March 2003, the applicant was again convicted of criminal contempt in the second degree in violation of New York Penal Law § 215.50, and sentenced to four months imprisonment. The record shows that in September 2004, the applicant was again convicted of criminal contempt in the second degree in violation of New York Penal Law

§ 215.50, and sentenced to six months imprisonment. A Notice to Appear was issued on November 2, 2004, placing the applicant in removal proceedings. The record shows the applicant conceded to the allegations set forth in the Notice to Appear and conceded removability before the immigration judge. Specifically, the applicant conceded that he was enjoined under a protection order issued by the Criminal Court of the [REDACTED] and that the Court found that he violated a portion of that order that involved protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued.¹ Furthermore, the record shows that in September 2006, the applicant was again convicted of criminal contempt in the second degree in violation of New York Penal Law § 215.50. The applicant was removed from the United States in March 2009.

The director found the applicant inadmissible for having been convicted of a crime involving moral turpitude pursuant to section 212(a)(2)(A)(i)(II) of the Act. Counsel has not contested inadmissibility on appeal and the record does not show that determination to be in error. Therefore, we will not disturb the finding that the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act and is eligible to apply for a waiver of inadmissibility under section 212(h) of the Act.

The director previously found that the applicant established extreme hardship to a qualifying relative. The AAO will not disturb the director's finding regarding extreme hardship. Therefore, sole issue before the AAO is whether or not the applicant is deserving of a favorable exercise of discretion.

In discretionary matters, the applicant 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).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the 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 alien began 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

¹ The record shows that in October 2006, the immigration judge ordered the applicant removed to Guyana and denied his request for cancellation of removal in the exercise of discretion. The BIA dismissed the applicant's appeal in July 2007, concluding that under the totality of the circumstances, the applicant's positive factors were insufficient to outweigh his adverse factors, particularly his demonstrated disregard for the laws of the United States. The BIA denied a subsequent motion to reconsider in September 2007, and the Second Circuit Court of Appeals dismissed the applicant's petition for review in February 2009.

or business ties, evidence of value or service in 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).

See Matter of Mendez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, “[B]alance 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).

In this case, the applicant’s wife, Ms. [REDACTED] submits an updated affidavit with the appeal. According to Ms. [REDACTED] her entire family is in disarray because of the denial of the applicant’s waiver application. She states she is broken emotionally and that she is also suffering economically. She claims her husband has changed his life, has attended alcohol rehabilitation in Guyana, and regrets his past mistakes. She states he does not drink anymore and knows that this is his last chance to be with his family. She contends that although her husband has made mistakes in his life, he was always a good father to their two children who are suffering tremendously due to his absence. Ms. [REDACTED] states that their son’s mental condition has deteriorated and that their daughter is suffering from depression, anxiety, and panic disorders. She states that despite her husband’s past arrests, she truly loves her husband. She states that he is a good man and that he has never been violent or threatened her or the children. She contends that during their separation, they have spoken by telephone at least every other day and she visited him one time, seeing for herself that he has become a changed man. She states that her husband’s deportation has humbled him and made him realize that he needed to change. Ms. [REDACTED] states that she believes her husband deserves a second chance and asks that they be reunited as a family.

A letter from the applicant submitted with the appeal states that he sincerely apologizes for his insensitive actions and his failure to abide by the laws of the United States. He acknowledges that his behavior was totally inappropriate, inexcusable, and disrespectful. The applicant states that he has been living in Guyana since March 2009, misses his family, and is grieving and hurting being away from them. He contends he has learned from his mistakes, asks for the opportunity to “right [his] wrongs,” and asks to return home to his family.

After a careful review of all of the evidence, including the additional, new documentary evidence submitted with the appeal, it has been established that the applicant merits a waiver of inadmissibility as a matter of discretion. The director had previously put great weight on the fact that the qualifying relatives in this case were the victims of the applicant’s crimes, and, therefore, it was not clear from the record whether granting the waiver and allowing the applicant to reenter the United States would help relieve their extreme hardship or cause them more hardship. Evidence submitted with the appeal addresses the director’s concerns. In addition to the statements from the applicant and his wife, the record also contains new evidence that the applicant has successfully completed a drug and alcohol rehabilitation program. A letter from the program coordinator states

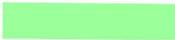
that the applicant completed a three-month long drug and alcohol rehabilitation program in Guyana. According to the program coordinator, the applicant was under surveillance for two months after the conclusion of the program and was found to be clean and sober, including through the Christmas holiday season. A letter of support in the record also indicates that the applicant is very upset and sad at being away from his family, has stopped drinking, and has completed rehabilitation and anger management programs. In addition, a letter from the applicant's daughter indicates that since her father's removal, he has been given "time to think, reflect, wake up and recognize his past mistakes, to learn from them and to make the best of the future."

Ms. [REDACTED] has consistently asserted throughout her husband's immigration proceedings that he has never been violent or threatened her or the children, but rather, has a drinking problem. In fact, the immigration judge, describing the case as "a very sad and sympathetic case," noted that Ms. [REDACTED] "acknowledged that he has never been violent with her or the children," and wanted the immigration court to cure the applicant's alcohol abuse. The immigration judge found that although the applicant has very significant favorable equities, his inability or unwillingness to comply with lawfully issued orders of protection and his lack of sincere effort to address his problem, whether an alcohol problem or some other emotional problem, outweighed the positive factors. The AAO finds that the evidence submitted with the applicant's appeal provides sufficient evidence of genuine rehabilitation.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include: the applicant's four convictions between 2002 and 2006 for criminal contempt of court in violation of protective orders and one conviction for harassment, and the applicant's removal from the United States. The favorable and mitigating factors in the present case include: the applicant's significant family ties to the United States, including his U.S. citizen wife and two U.S. citizen children; the extreme hardship the applicant's family has already experienced and will continue to experience if he were refused admission; the applicant's long residence in the United States of over twenty-five years, from 1983 until his removal in 2009, almost his entire adult life; numerous letters of support in the record describing the applicant as a kind and caring person who constantly helps others; a letter offering the applicant employment upon his return to the United States; evidence the applicant has recently completed an alcohol rehabilitation program in Guyana; and the applicant's apology and taking responsibility for his previous violations of law.

The AAO finds that, although the applicant's criminal convictions and immigration violation are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.²

² This decision relates only to the Form I-601 waiver application which is before the AAO on appeal. The applicant still needs an approved Form I-212 Application for Permission to Reapply for Admission to the United States After Deportation or Removal based on his inadmissibility under section 212(a)(9)(A) of the Act.



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 appeal is sustained.