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U.S. Citizenship
and Immigration
Services



DATE: OCT 02 2013

Office: LOS ANGELES

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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 (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 cursive script that reads "Michael Shumway".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Administrative Appeals Office (AAO) previously dismissed the applicant's appeal in a decision dated June 4, 2013. The matter is now before the AAO on motion. The motion will be granted and the prior decision of the AAO will be withdrawn.

The applicant is a native and citizen of Taiwan who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant sought 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. The Field Office Director, Los Angeles, California, denied the waiver application, finding that the applicant failed to establish that a denial of his admission would impose extreme hardship on a qualifying relative. *Decision of the Director*, dated March 2, 2012.

In our decision on appeal, the AAO found that the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act. We also found that as the applicant's convictions had occurred more than 15 years ago, he was eligible for a waiver based on rehabilitation under section 212(h)(1)(A) of the Act. However, we concluded that the applicant had failed to demonstrate that he had been rehabilitated. We also found that the applicant had failed to show that a qualifying relative would face extreme hardship if the waiver application were denied. Accordingly, we dismissed the applicant's appeal.

On motion, counsel for the applicant alleges that the applicant has demonstrated his rehabilitation through newly submitted evidence and is eligible for a waiver under section 212(h)(1)(A) of the Act. Counsel also asserts that the applicant's U.S. citizen mother and son would suffer extreme hardship if the applicant were removed. Furthermore, counsel contends that the applicant has demonstrated that he merits a waiver in the exercise of discretion.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that the decision was based on an incorrect application of law or Service policy. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). 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 motion.

On motion, the applicant has submitted a statement in which he acknowledges his past convictions and expresses remorse for his criminal activity. He has also provided statements from his mother and his spouse regarding his rehabilitation. He has also submitted copies of his conviction records, some of which were filed on appeal and some of which were not, and copies of his mother's medical records which were also submitted on appeal. In our decision on appeal, we noted that the applicant had not demonstrated his rehabilitation because he failed to acknowledge the convictions which rendered him inadmissible and had not expressed remorse for his actions. The applicant's submissions of his statement, statements from his mother and

spouse, and additional conviction records are an effort to take responsibility for his criminal history and to express remorse in order to demonstrate his rehabilitation. Therefore, the AAO will grant the applicant's motion.

We previously found that the applicant's convictions for forgery in 1989 and 1992 constitute crimes involving moral turpitude which render him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not dispute his inadmissibility on motion. Therefore, the only issues on motion are whether the applicant has demonstrated eligibility for a waiver and whether he merits a favorable exercise of discretion.

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 activities for which the applicant was found inadmissible occurred more than 15 years ago, they are 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.

In our decision on appeal, we found that the applicant had failed to acknowledge his 1989 conviction and had claimed that he had not been convicted of any crime in 1992. We also found that the record lacked any evidence of rehabilitation aside from an unsupported statement of counsel.

On motion, counsel for the applicant asserts that he misinterpreted the applicant's conviction records and did not realize that the applicant had been convicted of forgery in 1992 until he received additional conviction records after the AAO's decision on appeal. Counsel also acknowledges the applicant's conviction in 1989. Counsel notes that the applicant has resided in the United States for over 35 years, works to support his family, and has not been engaged in criminal activity since an arrest for speeding in 2003.

The applicant has taken responsibility on motion for both of his convictions for forgery as well as the rest of his criminal history. He expresses remorse for his criminal activity and states that his family suffered due to his "reckless and unethical behavior." He asserts that he has changed his behavior since he got married and became a father and that he has tried to be a responsible person. He notes that he has not been arrested since being stopped for speeding in 2003. The applicant's U.S. citizen mother also notes that the applicant "made a lot of mistakes when he was young" but that he is now "a changed person." She states that the applicant has been providing her with financial and emotional support for the past ten years and that she relies heavily on him for assistance in managing her health. *Affidavit of Chen Yen Lo*, dated July 3, 2013. The applicant's spouse also asserts that the applicant made mistakes between 1989 and 2003 but began to change his behavior when their son was born in 2001. She contends that the applicant supports his family and that the family will be separated if the waiver application is denied. *Affidavit of Jie Pan*, dated July 3, 2013.

The AAO finds that the applicant has established his eligibility for a waiver based on rehabilitation under section 212(h)(1)(A) of the Act. The record demonstrates that the applicant's last conviction occurred in 2003, when he pled guilty to a speeding infraction in violation of Ca. Vehicle Code § 22349(a) and was ordered to pay a fine. Prior to that incident, the applicant's last conviction had been in 1998, when he pled guilty to a controlled substance violation. That plea was later set aside and the case was dismissed. We previously found that his convictions in 1998 and 2003 did not constitute crimes involving moral turpitude.

The record demonstrates that the applicant served his criminal sentences and there is no indication that he has been engaged in criminal activity for the past decade. Also, the record does not show that the applicant has engaged in violent behavior at any time. The applicant has expressed shame and remorse for his criminal activity and notes that he has learned from his mistakes. His mother and spouse indicate that he is a responsible son, husband, and father and that he supports his family. Therefore, we find that the applicant has been rehabilitated and that admitting him would not be contrary to the national welfare, safety, or security of the United States.

Accordingly, the applicant has shown that he meets the requirements for a waiver under section 212(h)(1)(A)(iii) of the Act.

In determining whether the applicant warrants a favorable exercise of discretion under section 212(h) of the Act, the Secretary must weigh the positive and negative factors in the present case. The negative factors in this case are the applicant's two convictions for forgery, both of which occurred more than 15 years ago, as well as his other arrests between 1989 and 2003. The positive factors include the applicant's rehabilitation, the hardship the applicant's U.S. citizen mother and son would experience if he were removed, the fact that his spouse also depends on him, and the fact that the applicant has resided in the United States since 1977. While the applicant's criminal activity 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. The applicant's motion will be granted and the prior decision of the AAO will be withdrawn.

ORDER: The motion is granted, the prior decision of the AAO is withdrawn and the underlying appeal is sustained.