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

(b)(6)

Date: JUL 02 2014 Office: NEBRASKA SERVICE CENTER FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(h) of the Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

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 the Dominican Republic 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 crimes involving moral turpitude, and section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year. The applicant is married to a U.S. citizen and is the son of a lawful permanent resident. The applicant seeks a waiver of inadmissibility pursuant sections 212(h) and 212(a)(9)(B)(v) of the Act in order to live with his family in the United States.

The director found that the applicant established extreme hardship to a qualifying relative, his wife. However, the director found that the positive factors in the case do not outweigh the negative factors and denied the application as a matter of discretion.

On appeal, the applicant submits a letter explaining the circumstances of his unlawful presence and his crimes. The applicant also submits additional evidence in support of his waiver application.

The record includes, but is not limited to, the following documents: a copy of the marriage certificate for the applicant and his wife indicating they were married on May 29, 2002; a copy of the couple's daughter's birth certificate; a letter from the applicant; statements from the applicant's wife; a copy of the applicant's father's death certificate; arrest and conviction documents; a letter from a mental health professional; a letter from the applicant's employer; letters of support; letters from the applicant's brothers and mother; copies of tax records and other financial documents; photographs of the applicant and his family; and an approved Immigrant Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (i) In General - Any alien (other than an alien lawfully admitted for permanent residence) who -
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> . . . .
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> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
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> . . . .

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

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 . . . is inadmissible.

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

(h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

(1)(A) in the case of any immigrant it is established to the satisfaction of the [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.

(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 [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 [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.

In this case, the record shows, and the applicant does not contest, that he entered the United States in September 1991 when he was fourteen years old using a B-2 visitor's visa. The applicant accrued more than one year of unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until he filed a Form I-485 in 2004. The applicant's Form I-485 was denied in September 2006 and he filed a second Form I-485 in February 2007 which was denied in January 2008. The applicant was granted voluntary departure and departed the United States in August 2008. He now seeks admission within ten years of his 2008 departure. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking admission to the United States within ten years of his last departure.

Regarding inadmissibility for crimes involving moral turpitude, the record shows that the applicant has been convicted of several crimes, as follows:

- In April 2002, the applicant pled guilty to shoplifting in the third degree in violation of New Jersey Criminal Code § 2C:20-11 and was sentenced to three years of probation.[1]
- In September 2004, the applicant was convicted of making a false statement to a law enforcement officer in violation of Maryland Criminal Code § 9-501 and was sentenced to time served of thirty-two days.
- In November 2004, the applicant pled guilty to receiving stolen property in violation of New Jersey Criminal Code § 2C:20-7A and sentenced to three years of probation.
- In December 2005, the applicant pled guilty to presenting false identification to police and sentenced to time served of eleven days.
- In January 2007, the applicant pled guilty to criminal possession of stolen property in the third degree in violation of New York Penal Law § 165.50 and sentenced to five years of probation.
- In March 2008, the applicant pled guilty to retail theft and larceny in Florida and sentenced to time served of fifty-four days.

The record shows the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude. Inadmissibility is not contested on appeal.

The director concluded that although the applicant established extreme hardship to his wife, the applicant nonetheless does not warrant a favorable exercise of discretion. We will not disturb the

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[1] The Warrant of Arrest in the record is in a different name, one of several alias's that the applicant admits to using related to his criminal conviction.

finding that the applicant established extreme hardship to his wife. Therefore, the sole issue before us 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 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).

After a careful review of all of the evidence, the record establishes that the applicant merits a waiver of inadmissibility as a matter of discretion. The applicant has submitted a letter with his appeal explaining the circumstances of his past. According to the applicant, one week after arriving in the United States at the age of fourteen, he learned his father had passed away. The applicant states that his father's death devastated his life and his family decided it was best for him to stay in the United States with his brother who was the only person able to raise him and provide for him. The applicant contends he was not aware he was living in the United States illegally and that it was never his choice or intention to stay in the country without proper documentation. He states that when he found out about his status in the United States, all of his dreams came to a stop and he became depressed not being able to do what other people could do. He states he made mistakes, went down the wrong path, and understands that his criminal record is excessive and that he must be punished for his wrongdoing. However, he contends that the five years away from his wife and daughter have been the biggest punishment he could ever receive. He states he is truly a changed man and that he would never jeopardize his family's well-being by committing any offenses as he had done in the past. The applicant submits a copy of his father's death certificate showing that his father passed

away from a stroke on September 27, 1990, five days after the applicant was admitted into the United States.

A letter from the applicant's mother states that she came to the United States with her son when he was fourteen years old and that soon after their arrival, the applicant's father passed away. She states that her visa was cancelled and that she was forced to leave her son with his siblings who tried to get him a green card, but after years went by, he never received his green card. She states her son is depressed and is trying to straighten out his life, working very hard and devoting his life to church. She assures that she, along with the applicant's brothers, sisters, wife, and daughter will make sure he never breaks the law again.

A letter from the applicant's brother states that he feels responsible for what the applicant has gone through because he should have been a better guardian. The brother contends that the applicant was in this country as a young child without a mother or father. He states that the applicant has grown up a lot and realizes how much he has hurt his family. He also states that his family will support the applicant and will ensure that he never again commits any criminal offenses or gets into any kind of trouble.

A letter from another brother states that even though the applicant has made mistakes, he has a good heart and is always willing to help others. He states the applicant always wanted to go to college, but due to his immigration status, he was unable to, which led to his depression and probably made him follow the wrong steps. Additional letters of support in the record also contend that the applicant has turned his life around, has a tremendous heart, and is a loving and kind person who does not hesitate to help others. These letters further state the applicant is an excellent father and husband who has matured and regrets his past mistakes, and assure that he will never get into trouble with the law again.

Moreover, the record contains a letter from a mental health professional stating that the applicant has attended regular appointments to address his deep depression due to his separation from his family. The letter states that the applicant has "disorders of loneliness which were not taken care of as a child" which has affected his growing up. The letter states that the counseling sessions have helped the applicant to mature and to keep his emotions under control and in a healthy manner.

In addition, the record contains a letter from the applicant's employer in the Dominican Republic showing he has been employed since January 2009. A letter from a church indicates the applicant has been attending church activities in the Dominican Republic, and a letter from a neighbor indicates he is a respectful neighbor who helps with whatever the community needs.

Furthermore, the record shows that an immigration judge granted the applicant voluntary departure after finding that although the applicant has a criminal history, none of the crimes involved crimes of violence or crimes against individuals, but rather, have been property crimes. As the immigration judge stated, the applicant lived in the United States for over eighteen years and has substantial

family ties in the United States including a U.S. citizen wife, child, brothers and sisters, and a lawful permanent resident mother.

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 significant criminal history that includes six convictions and use of several alias's in order to evade detection, and the applicant's unlawful presence in 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, child, siblings, and lawful permanent resident mother; the extreme hardship his entire family has already experienced and will continue to experience if he were refused admission; numerous letters of support; residence of over eighteen years in the United States beginning at the age of fourteen; a history of stable employment for the past five years; and the applicant's remorse and taking responsibility for his previous violations of law.

The record establishes that the favorable factors in the present case outweigh the adverse factors such that a favorable exercise of discretion is warranted.

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.