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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: MAY 30 2014

Office: NEW YORK, NY

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

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:  
[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, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The District Director, New York, New York, 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 Colombia 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 several crimes involving moral turpitude. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant section 212(h) of the Act in order to live with his wife in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends that the applicant established extreme hardship, particularly considering the applicant's wife is completely dependent on her husband due to her severe carpal tunnel syndrome in both hands which prevents her from being employed, and the fact that the couple is hoping to adopt their foster child, [REDACTED]

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. [REDACTED] indicating they were married on February 22, 1995; a letter and an affidavit from Ms. [REDACTED]; copies of medical records; copies of bills, tax returns, and other financial documents; documentation from [REDACTED] of New York; numerous letters of support; a letter from Ms. [REDACTED]'s aunt; articles addressing country conditions in Colombia; a letter from the applicant's employer; copies of conviction documents; 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)(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 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.

(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 . . . .

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).

In this case, the record shows that the applicant was convicted of the following crimes: assault in the third degree in violation of New York Penal Law § 120.00 in June 1990; criminal possession of stolen property in the third degree in violation of New York Penal Law § 165.50 in August 1991; criminal possession of stolen property in the third and fourth degrees in violation of New York Penal Law §§ 165.50 and 165.45, respectively, in March 1992; and attempted criminal possession of stolen property in the fourth degree in violation of New York Penal Law § 110-165.45 in June 1995. The Second Circuit Court of Appeals, within which the present case arises, has held that criminal possession of stolen property is categorically a crime involving moral turpitude. *See Michel v. INS*, 206 F.3d 253, 263-64 (2<sup>d</sup> Cir. 2000). In addition, the Board of Immigration Appeals has held that a conviction for third-degree assault under New York Penal Law section 120.00 is a crime involving moral turpitude because it requires, at a minimum, injurious conduct that reflects a level of depravity or immorality appreciably greater than that associated with simple battery. *See Matter of Solon*, 24

I&N Dec. 239 (BIA 2007). Therefore, the applicant has several convictions for crimes involving moral turpitude. Counsel does not contest the finding of inadmissibility on appeal.

After a careful review of the evidence, the record shows that the applicant is eligible for a waiver pursuant to section 212(h)(1)(A) of the Act. A section 212(h)(1)(A) waiver is dependent upon a showing that the activities for which the alien is inadmissible occurred more than fifteen years before the date of the alien's adjustment of status application; the alien's admission to the United States would not be contrary to the national welfare, safety, or security of the United States; and the alien has been rehabilitated. See section 212(h)(1)(A) of the Act. Once eligibility for a waiver is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

In this case, all of the applicant's convictions are more than fifteen years old. The applicant filed for adjustment of status on June 12, 2012. The applicant's most recent conviction occurred in 1995. Therefore, the activities for which the applicant is inadmissible occurred more than fifteen years before the date of the alien's application for adjustment of status.

In addition, the record establishes that the applicant has been rehabilitated and that his admission to the United States would not be contrary to the national welfare, safety, or security of the country. The applicant is currently fifty-one years old and has not had any further convictions for almost nineteen years. He takes full responsibility for his actions and states that he has matured into a responsible, family man who provides for his disabled wife and their foster child. He states he is thoroughly embarrassed by his past conduct and states he wants to be a good role model for his foster child who he is in the process of adopting. Letters from the applicant's wife describe the applicant as a good and responsible husband who is a great foster father. The record also contains letters of support describing the applicant as an honorable, respectful, and hardworking person. The record contains documentation corroborating the contention that the applicant and his wife are caring for a foster child. The record also contains a letter from the applicant's employer of over thirteen years describing the applicant as an intelligent, hard-working Mechanic who takes his work seriously and who is an integral part of the company's success. Based on this information, the AAO finds that the applicant has been rehabilitated and his admission is not contrary to the national welfare, safety, or security of the United States.

The AAO further finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

The adverse factors in this case include the applicant's convictions from 1990, 1991, 1992, and 1995, his entry into the United States without inspection, and periods of unauthorized presence and employment in the United States.

The positive factors in this case include: the applicant's family ties in the United States, including his U.S. citizen wife and foster child; the hardship to the applicant's entire family if he were refused admission; several letters of support for the applicant; and the fact that the applicant has not been convicted of any further offenses for almost nineteen years.

Although the applicant's convictions and immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted. The burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.