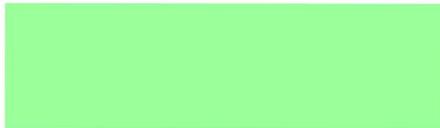




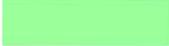
U.S. Citizenship  
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Services

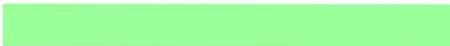
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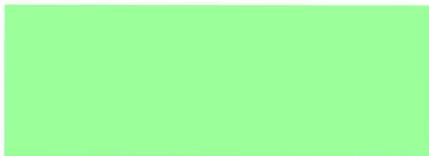
OFFICE: HOUSTON

File: 

IN RE: Applicant: 

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:



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 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 Iran 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 been convicted of crimes 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 reside in the United States with his U.S. citizen spouse and parents.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. See *Decision of the Field Office Director*, dated October 31, 2013.

On appeal, counsel contends that the field office director failed to consider that the applicant has established that he has been rehabilitated in the more than 15 years since his convictions. Alternatively, counsel asserts that the applicant has established extreme hardship to his U.S. citizen spouse and parents. See *Form I-290B, Notice of Appeal or Motion* (Form I-290B), dated November 22, 2013.

In support of the instant appeal, counsel submits the following: a brief, criminal records pertaining to the applicant, a letter of support from the applicant's spouse, psychological documentation pertaining to the applicant and his spouse, medical documents pertaining to the applicant's father, and information and documentation about country conditions in Iran. 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 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 the applicant was convicted of crimes on three separate occasions in Texas. In 1996, the applicant was convicted of Credit Card Abuse in the Third Degree for his conduct on or about February 9, 1994. In addition, the applicant was convicted in 1996 of Engaging in Organized Crime for his conduct on or about August 14, 1994. In 1995, the applicant was convicted of Theft for his conduct on or around March 9, 1995. The applicant does not contest that he has been convicted of crimes involving moral turpitude rendering him inadmissible to the United States pursuant to section 212(a)(2)(A) of the Act. We have reviewed the statutes, case law and other documents related to these convictions, as well as the relevant precedent decisions from the Board of Immigration Appeals and the courts. We concur with the field office director that the applicant has been convicted of multiple crimes involving moral turpitude and is therefore inadmissible under section 212(a)(2)(A)(i) of the Act.

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

(h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in [his] discretion, waive the application of subparagraphs (D)...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 alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection...

(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 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...

(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.

As the above-referenced crimes involving moral turpitude occurred more than fifteen years ago, the applicant is eligible for a waiver of inadmissibility under section 212(h)(1)(A) of the Act, and it is not necessary to determine whether the applicant's qualifying relatives would suffer extreme hardship if the applicant were removed to Iran. The record does not indicate that the applicant's admission to the United States would be contrary to the national welfare, safety, or security of the United States. Moreover, the record indicates that the applicant has not been convicted of any crimes since 1996, more than eighteen years ago, which indicates rehabilitation.

To further support the applicant's rehabilitation, counsel has submitted a brief. Counsel maintains that the applicant is married to a U.S. citizen who needs her husband's daily presence and support. Counsel further notes that the applicant graduated from high school in the United States, registered for Selective Service, has been residing in the United States for decades, and has accomplished his own financial success by opening his own business. Counsel asserts that since 1996, the applicant has not committed any crimes and has been a person of good moral character, working and helping his wife and parents and his extended family, paying taxes, and supporting his church. Finally, counsel maintains that the applicant was a teenager at the time of his convictions and has since expressed remorse, accepting responsibility for his actions and learning his lesson from being imprisoned and losing his personal freedom after deportation to Iran. *See Brief in Support of Appeal*, dated November 22, 2013.

Counsel further declares that the applicant would experience hardship he to relocate to Iran. First, counsel explains that the applicant was diagnosed with testicular cancer and received humanitarian parole into the United States because he could not receive proper medical care in Iran, and were he to return to Iran, he would experience medical hardship. In addition, counsel conveys that the applicant would face threats to his personal safety in Iran as a Christian. Counsel refers to U.S. Department of State information regarding the problematic country conditions in Iran. *Id.* at 9-14.

In support, a letter has been provided from the applicant's U.S. citizen spouse expressing the hardships she would experience were her husband to relocate abroad. She explains that she needs her husband's daily presence and support and relocating abroad to a country that is not her home would cause her extreme hardship. She notes that she is unfamiliar with the country, culture and customs and she would experience hardship due to long-terms separation from her community and her extended family. Moreover, she contends that the liberties she is accustomed to in the United States would be infringed upon in Iran due to being a female, a Christian, and an American. A psychological evaluation has been submitted from the applicant's spouse's long-term psychotherapist outlining the negative psychological impact the applicant's relocation abroad would cause his spouse. The record indicates that the applicant and his spouse have been married for over 15 years.

Extensive documentation has also been submitted regarding country conditions in Iran and the hardships the applicant and his family would experience were they relocate there, in light of their Christian beliefs and their Western culture and values. *See Professional Analysis from Professor [REDACTED]* dated November 1, 2012. We note that that the U.S. Department of State has issued a Travel Warning for Iran, urging U.S .citizens to carefully consider the risks of travel to Iran due to due to hostilities towards Americans and religious minorities, including Christians. *See Travel Warning-Iran, U.S. Department of State, dated May 22, 2014.*

Counsel has also submitted documentation establishing the applicant's extensive ties in the United States, including business and home ownership. Most notably, a letter in support has been provided from [REDACTED] the applicant's business partner, outlining the applicant's ties to the United States, the hardships he would experience were he to return to Iran, and the negative ramifications to the business were the applicant to relocate abroad. Counsel has also submitted tax documentation to establish that the applicant pays taxes. Medical documentation has also been provided establishing the applicant's medical conditions and the need for continued monitoring by physicians familiar with his diagnosis and treatment plan. In addition, counsel has submitted medical documentation establishing that the applicant's father has been diagnosed with chronic lymphocytic leukemia. Finally, counsel has submitted numerous letters in support from friends, family, and his church, establishing the applicant's good moral character.

The applicant has shown by a preponderance of the evidence that he has been rehabilitated. As discussed above, there is no evidence that he has been convicted of a crime involving moral turpitude since 1996 and no evidence that he has engaged in any criminal activity since 1995, more than 19 years ago. The record shows that during the ensuing years, the applicant has operated a business employing others, volunteered in his church and community, and provided support to his U.S. citizen spouse and other family members. The record includes attestations to his good moral character and essential presence in the community and does not indicate that the

applicant has a propensity to engage in further criminal activity. Accordingly, the applicant has shown that he meets the requirement of section 212(h)(1)(A)(iii) of the Act.

Based on the foregoing, the applicant has shown that he is eligible for consideration for a waiver under section 212(h)(1)(A) of the Act. Further, we note that the applicant's U.S. citizen spouse and parents would suffer hardship as a result of their separation from the applicant. However, the grant or denial of the waiver does not turn only on the mere passage of fifteen years of time. It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. In discretionary matters, the alien 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). This office 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).

The favorable factors in this matter are the applicant's U.S. citizen or lawful permanent resident spouse, parents, siblings and grandparents; the hardships that the applicant's family would face if the applicant were not present in the United States; community ties; business and home ownership; the applicant's payment of taxes; and the passage of more than 18 years since the applicant's most recent conviction for a crime involving moral turpitude. The unfavorable factors in this matter are the applicant's multiple criminal convictions; his removal from the United States in 1997; periods of unlawful presence and employment while in the United States; and the applicant's failure to depart the United States pursuant to the terms of his humanitarian parole.

The crimes and immigration violations committed by the applicant were serious in nature. Nonetheless, we find that the applicant has established that the favorable factors outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's 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.