



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF S-R-W-

DATE: DEC. 2, 2015

APPEAL OF NEWARK, NEW JERSEY FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native of Jamaica and citizen of Canada, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(h), 8 U.S.C. § 1182(h). The Director of the Newark, New Jersey Field Office denied the application. The matter is now before us on appeal. The appeal will be sustained.

The Applicant 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 a crime involving moral turpitude. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on his behalf by his U.S. citizen spouse. He filed a Form I-601, Application for Waiver of Grounds of Inadmissibility, pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his spouse and children.

In a decision dated February 4, 2015, the Director determined that the record contained insufficient evidence to establish that the Applicant has been rehabilitated, or that extreme hardship would be imposed on his spouse and children if he were denied admission into the United States.¹ The Form I-601 was denied accordingly.

On appeal, the Applicant does not contest that he has been convicted of a crime involving moral turpitude. He asserts, however, that the record establishes that he has been rehabilitated. He asserts further that the cumulative evidence in the record establishes that his spouse and children would experience extreme hardship if he is denied admission into the United States. The Applicant also indicates that the evidence demonstrates that a favorable exercise of discretion is merited in his case. In support of these assertions, the record includes, but is not limited to, information pertaining to the Applicant's criminal record and statements from the Applicant, his spouse, family members, and former co-workers. The record also contains a psychological evaluation, medical and financial evidence, and documentation establishing relationships and identity.

The entire record has been reviewed and considered in arriving at a decision on the appeal.

¹ The Director also noted that the Applicant could become a public charge if he were admitted into the country.

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Section 212(a)(2)(A) of the Act provides, in pertinent part, that:

- (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:

The Attorney General [Secretary of Homeland Security (Secretary)] 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

The Board of Immigration Appeals (Board) stated in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

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 the present matter, the record reflects that on [REDACTED] 1990, the Applicant was convicted in [REDACTED] Canada of Theft under \$1000 and that he received a suspended sentence and probation for one year. The Applicant does not contest that he was convicted of a crime involving moral turpitude and is

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inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, and he thus requires a waiver of inadmissibility under section 212(h) of the Act.

Section 212(h)(1)(A) of the Act provides that we may waive the application of inadmissibility under section 212(a)(2)(A)(i)(I) if the activities for which the Applicant is inadmissible occurred more than 15 years before the date of his application for a visa, admission, or adjustment of status. Section 212(h)(1)(A) of the Act also 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 the Applicant has been rehabilitated.

In the present matter, the record reflects that the Applicant was convicted of theft in 1990. Since the criminal activity for which the applicant was found inadmissible occurred more than 15 years ago, it is waivable under section 212(h)(1)(A) of the Act.

A review of the record reflects that the Applicant was [redacted] years old when his theft conviction occurred, and he has no other criminal convictions.² The Applicant explains the circumstances of his theft conviction in an affidavit dated March 4, 2015, indicating that he and several other youths were involved in a fight, and the theft charge was brought because one of the youths lost a necklace during the fight that was never recovered. The Applicant asks for forgiveness in his affidavit, and he states that he regrets the incident and that he is now a family man with a desire to provide for and enjoy life with his family. The record reflects further that the Applicant has resided in the United States since 1999 and that he has significant family ties in the United States, including his U.S. citizen spouse of over 17 years and five U.S. citizen children between the ages of [redacted] and [redacted]. A psychological evaluation from a licensed psychologist reflects that the Applicant's spouse suffers from symptoms of anxiety and depression due to fears related to the Applicant's uncertain immigration situation. The record also contains letters from the Applicant's former employer and a former co-worker attesting to the Applicant's good character and work ethic. In addition, the record contains letters from the Applicant's spouse and eldest son attesting to the Applicant's involvement in their family and his good character and expressing emotional, physical, educational, and financial hardship the family would experience if the Applicant were denied admission into the country.

Upon consideration of the totality of the circumstances, the record reflects that the applicant's admission to the United States is not contrary to the national welfare, safety, or security of the United States and that he has been rehabilitated, as required by section 212(h)(1)(A) of the Act. The applicant is the spouse of a U.S. citizen and the father of five U.S. citizen children. Supporting statements attest to the Applicant's rehabilitation and close relationship with his family members, who reside in the United States and would experience hardship if the Applicant were denied admission. Further, the applicant has not been convicted of any other crime, and his conviction for theft occurred 25 years ago.

² Although the record contains evidence that the Applicant was charged with other crimes between 1990 and 2006, all of the charges were either withdrawn or dismissed.

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The Applicant has also established that he merits a waiver of inadmissibility as a matter of discretion. 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 inadmissibility 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).

The unfavorable factors in this case are the Applicant's conviction for theft and his period of unauthorized presence in the United States. The favorable factors are the hardship the Applicant's U.S. citizen spouse and children would face if the Applicant were denied admission into the country; statements made by the Applicant that he regrets his past conduct, takes responsibility for his actions, and considers himself rehabilitated; the passage of 25 years since the Applicant's theft conviction; and letters from friends, family members, and a former employer attesting to the Applicant's good character. Upon review, a positive exercise of discretion is appropriate in this case.

In application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.

Cite as *Matter of S-R-W-*, ID# 13923 (AAO Dec. 2, 2015)