



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

(b)(6)



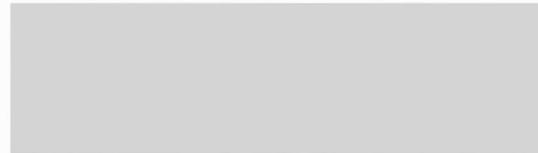
DATE: JUN 04 2015

FILE: [REDACTED]
APPLICATION RECEIPT: [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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, New Orleans Field Office, denied the application. 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 Cuba 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 committed crimes involving moral turpitude. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) pursuant to the Cuban Adjustment Act on March 21, 2013.¹ The applicant seeks a waiver 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 her U.S. citizen spouse, son, and parents.

The field office director concluded that the applicant had not established that she has been rehabilitated or that her admission would not be contrary to the national welfare, safety, or security of the United States and denied the Application for Waiver of Grounds of Inadmissibility accordingly. *Decision of the Field Office Director* dated September 10, 2014.

On appeal the applicant asserts that the field office director erred in the finding that she had not been rehabilitated only because of her arrests. With the appeal the applicant submits a written statement, a report on returning prisoners, and a court document related to the applicant's 2013 arrest. The record contains statements from the applicant; letters of support from the applicant's spouse, parents, and son as well as other family members, friends, and colleagues; medical and mental health documentation for the applicant; medical documentation for the applicant's mother; financial documentation; and court documentation for the applicant's prior arrests. The entire record was reviewed and considered in rendering a 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.

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

¹In 1996 the applicant filed an Application for Asylum and Withholding of Deportation (Form I-589), which was denied by an immigration judge on May 19, 1996, and an appeal to the BIA was dismissed on December 31, 1996.

[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.

The record reflects that the applicant was convicted on [REDACTED] in the [REDACTED] Judicial District Court of Louisiana, [REDACTED] of Theft Under \$100 in violation of Louisiana Revised Statute section 14:67.10 and sentenced to 30 days in jail and six months of probation. The applicant was convicted on [REDACTED] of Theft of Goods in violation of section 14:67.10 and sentenced to two years confinement at hard labor with the Louisiana Department of Corrections. On [REDACTED] the applicant was convicted on two counts of Access Device Fraud in violation of section 14:70.4 and sentenced to two years confinement, running concurrently, at hard labor.

The BIA has determined that to constitute a crime involving moral turpitude, a theft offense must require the intent to permanently take another person's property. *See Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973) ("Ordinarily, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended."). *See also Matter of Jurado*, 24 I&N Dec. 29, 33 (BIA 2006) (recognizing that in determining whether theft is a crime of moral turpitude, the BIA considers "whether there was an intention to permanently deprive the owner of his property.") Crimes that include as a requirement an intent to defraud have also been held, as a general rule, to involve moral turpitude. *Matter of Adetiba*, 20 I&N Dec. 506, 508 (BIA 1992); *see also Burr v. INS*, 350 F.2d 87, 91 (9th Cir. 1965), cert denied, 383 U.S. 915 (1966). The applicant has not contested that her convictions for theft and access device fraud are for crimes involving moral turpitude.

The record also reflects that from 1979 until 1995 the applicant was arrested on numerous occasions, with some arrests resulting in convictions, including for prostitution, shoplifting, theft, and disturbing the peace. The applicant also admits to past illicit drug use, but the record does not reflect that she was convicted of violations involving substance abuse. The record contains mental health evaluations of the applicant in 1999 and 2000 that indicate substance abuse and a diagnostic impression including schizoaffective disorder, and that she was prescribed medication. However, the Form I-693, Report of Medical Examination and Vaccination Record, dated May 7, 2012, and submitted in conjunction with the application to adjust status, indicates no Class A or B physical or mental disorder and no class A or B substance (Drug) abuse/addiction.

Section 212(h)(1)(A) of the Act provides that certain grounds of inadmissibility under section 212(a)(2)(A)(i)(I)-(II), (B), and (E) of the Act may be waived in the case of an alien who demonstrates to the satisfaction of the Attorney General that:

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or 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.

In the present matter, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. While the applicant's convictions are significant, the record does not show that she has engaged in violent behavior or that she has engaged in criminal activity following her conduct of 1995 which resulted in criminal convictions more than 20 years ago. The record does not reflect that admitting the applicant would be contrary to the national welfare, safety, or security of the United States.

The record shows that applicant entered the United States in 1970 at eight years old with her parents and siblings. In her statements the applicant indicates that she was married at age 15 to a physically and emotionally abusive husband who introduced her to drugs, which resulted in her criminal history. She states that her second husband was also a drug abuser and left her to raise their two children alone. The applicant states that following her convictions she spent several years in prison, including being detained by the legacy U.S. Immigration and Naturalization Service after completing her sentence. She states that she was released in 2000 to rejoin her family, but in 2002 an aunt with whom she was very close died and the applicant's 17-year-old daughter was killed in auto accident. She states that she struggled to control her life, maintain employment, and stay off drugs permanently.

The record shows that in 2001 and 2002 the applicant was convicted of misdemeanor offences of Disturbing the Peace, Disorderly Conduct. On appeal the applicant states that the convictions stemmed from incidents with her son following her release from incarceration as she was attempting to reconcile with him because he had felt abandoned by her. On [REDACTED], the applicant was charged with Operating a Vehicle While Intoxicated (DWI), but those charges were dismissed on [REDACTED]. Letters of support submitted to the record describe the applicant as hardworking, reliable, and emotionally supportive of others. A letter from her son indicates that they have become close and that she provides care for her grandchild. The applicant states that she is the primary care giver for her elderly parents, who submitted a statement about her assistance to them, and a letter from the parents' doctor also states that the applicant provides care for them. A letter from the son of the applicant's current spouse credits the applicant with reuniting her spouse with his children after years of separation.

The applicant states that she is a certified nurse assistant working with people who have disabilities and special needs. A letter from the applicant's employer, [REDACTED], states that the applicant has been employed since 2009, has passed all background checks and drugs tests, is a

valued employee, receives good ratings, and works with medically complex individuals. The record also contains a letter of support from people for whom the applicant provides care stating that she is reliable, honest, and trustworthy.

We find that the applicant has shown by a preponderance of the evidence that she has been rehabilitated. As noted above, she has been gainfully employed by the same employer since 2009, provides care for her parents and a grandchild, and has apparently remained drug free. The record does not indicate that the applicant has a propensity to engage in further criminal activity. The applicant's misdemeanor convictions for disturbing the peace were more than 13 years ago, and 2013 DWI charges were dismissed. In her statements the applicant acknowledges the seriousness of her criminal past, for which she states she is ashamed and regrets her actions and the impact on her family. Accordingly, the applicant has shown that she meets the requirement of section 212(h)(1)(A)(iii) of the Act. Based on the foregoing, the applicant has shown that she is eligible for consideration for a waiver under section 212(h)(1)(A) 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 positive and negative factors in the present case. The negative factors in this case are the applicant's criminal history, including convictions of crimes involving moral turpitude. The positive factors in this case include hardship to the applicant's spouse, son, and parents as a result of the applicant's inadmissibility; the emotional and economic support the applicant provides to her family; the applicant's long-time residence in the United States; the applicant's gainful employment and payment of taxes; and the lack of a significant criminal record in nearly 20 years. While the applicant's criminal convictions are serious, 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.

ORDER: The appeal is sustained.