



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: JUN 10 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:

[Redacted]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

A handwritten signature in cursive script, appearing to read "Michael Shumway".

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Harlingen, Texas, denied the waiver application. The Administrative Appeals Office (AAO) rejected a subsequent appeal as untimely filed. The case will be reopened pursuant to 8 C.F.R. § 103.5(a)(5), the appeal will be accepted as timely filed, and the matter will be remanded to the field office director for further action consistent with this decision.

The applicant is a native and citizen of Mexico 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), based on his conviction for voluntary manslaughter, a crime 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 a decision dated December 21, 2011, the field office director, citing to both sections 212(h)(1)(B) and 212(i) of the Act, concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on his U.S. citizen wife and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly.

On appeal, the applicant asserts that the field office director erred in citing section 212(i) of the Act. He also contends that because more than 15 years have elapsed since his conviction, the field office director erred in failing to also consider the applicant's eligibility for a waiver under section 212(h)(1)(A) of the Act, which does not require a showing of extreme hardship to a qualifying relative as required under section 212(h)(1)(B). The applicant asserts that he has demonstrated eligibility under both section 212(h)(1)(A) and section 212(h)(1)(B), and submits additional evidence on 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 record reflects that the applicant pled guilty and was convicted of voluntary manslaughter on [REDACTED] 1984 in the District Court of [REDACTED] Texas, for an offense involving the stabbing of another person with a knife on [REDACTED] 1983. The applicant was sentenced to seven years imprisonment. The applicant does not dispute that he was convicted of a crime involving moral turpitude rendering him inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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

The Attorney General [Secretary of Homeland Security] 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 . . .

On appeal, the applicant argues correctly that he can be considered for a waiver of inadmissibility under section 212(h)(1)(A) of the Act (in addition to section 212(h)(1)(B)). He further contends that the evidence he has presented demonstrates that he has been rehabilitated and that his admission would not be contrary to the national welfare, safety, or security of the United States. He argues that he has raised his son to become a “responsible, peaceful, contributing member of society,” and that his family life, as well as his civic and religious activities, demonstrate his rehabilitation. The applicant states that he feels “immeasurable guilt” for his crime and has had “no further involvement with the criminal justice system.” The applicant further argues that the evidence shows that his spouse, his adult son and his stepchildren would experience extreme hardship if he were removed to Mexico.

The record reflects that the field office director did not consider the applicant for waiver eligibility under section 212(h)(1)(A) of the Act. In this respect, we further note that 8 C.F.R. § 212.7(d) applies to the applicant’s case due to the nature of his crime. That provision provides:

The Attorney General [Secretary, Department of Homeland Security], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act **in cases involving violent or dangerous crimes**, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien’s

underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

(Emphasis added).

It is unquestionable that the applicant's conviction was for a "violent or dangerous crime." Neither the field office director nor the applicant have addressed specifically whether extraordinary circumstances may exist that would permit a favorable exercise of discretion under 8 C.F.R. § 212.7(d). Consequently, we remand this matter to the field office director to consider the applicant's statutory eligibility under section 212(h)(1)(A) in the first instance and reconsider his eligibility under section 212(h)(1)(B). On remand, the director will provide the applicant adequate opportunity to submit a brief and/or additional evidence prior to issuing a new decision. Should the director find the applicant eligible under one or both of the waiver provisions, the director shall then determine whether there are extraordinary circumstances warranting a favorable exercise of discretion pursuant to 8 C.F.R. § 212.7(d). If the new decision is adverse to the applicant, the field office director will certify it for review to the AAO.¹

ORDER: The matter is remanded to the field office director for further action consistent with this decision.

¹ In remanding the record, we express no opinion regarding the applicant's eligibility under either waiver provision; an adverse decision will be certified to us only to avoid the applicant having to incur another fee for filing a second appeal.