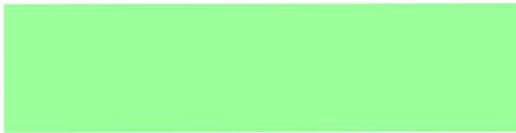


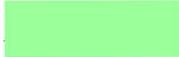
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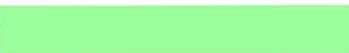


U.S. Citizenship
and Immigration
Services



Date: JUN 12 2013 Office: MIAMI (WEST PALM BEACH)

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Michael Shumway".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the application will be approved.

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)(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's spouse and two children are U.S. citizens. She seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The AAO found that the applicant did not establish extreme hardship to a qualifying relative and dismissed the appeal accordingly. On motion, the applicant details hardship to her spouse and children, and she cites section 212(h)(1)(A) in asserting that it has been more than 15 years since her criminal activity and she no longer needs a waiver.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The applicant has submitted her motion, statements from her spouse and son, birth certificates for her children, a warranty deed, professional certificates, tax returns and a copy of the statute she cited. She has also asserted the fact that she is now eligible for consideration under section 212(h)(1)(A), as the facts now are that 15 years have passed since her criminal activity.

Section 212(a)(2) of the Act states in pertinent part:

Criminal and related grounds. —

(A) Conviction of certain crimes. —

(i) In general. — Except as provided in clause (ii), any 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, or . . .

As discussed in its initial decision, the AAO found that the applicant was convicted of grand theft under California Penal Code Section 487 on March 2, 1992, theft of property under California Penal Code Section 484(a) on July 29, 1992, and burglary under California Penal Code Section 459 on February 9, 1994 and August 11, 1995.

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

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana

(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 record reflects that the district director and AAO evaluated the waiver application under section 212(h)(1)(B) of the Act. The activity resulting in the applicant's most recent conviction on August 11, 1995 occurred less than 15 years before the dates of the decisions of the district director and the AAO. The applicant cites section 212(h)(1)(A) in asserting that it has been more than 15 years since her criminal activity and she no longer needs a waiver. Although she still needs a waiver, the AAO notes that she is now eligible to file for a waiver under section 212(h)(1)(A) of the Act which relates to crimes that have been committed more than 15 years ago.

An application for admission or adjustment of status is considered a "continuing" application and "admissibility is determined on the basis of the facts and the law at the time the application is finally considered." *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992) (citations omitted). As the

activities for which the applicant is inadmissible occurred more than 15 years ago, the facts now show that she meets the requirement of section 212(h)(1)(A)(i) of the Act.

The record does not reflect that admitting the applicant would be contrary to the national welfare, safety, or security of the United States per section 212(h)(1)(A)(i) of the Act. The applicant's tax returns reflect that she is self-employed and provides housekeeping services. The record reflects that the applicant's spouse is employed and that the applicant has a Form I-864 joint sponsor. There is no indication that the applicant has ever relied on the government for financial assistance. The record reflects that the applicant has not had a criminal conviction in over 15 years, other than a September 15, 2003 conviction for driving under the influence. There is no indication that the applicant poses other security issues.

The applicant has shown by a preponderance of the evidence that she has been rehabilitated per section 212(h)(1)(A)(iii) of the Act. In addition, she has raised two children and she has completed professional certificate programs. The record includes several letters attesting to her good character. 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.

The granting of the waiver is discretionary in nature. The favorable factors include the applicant's U.S. citizen spouse and children, hardship to her family, filing of tax returns and good character as detailed in letters of support. The unfavorable factors include the applicant's criminal convictions, unauthorized period of stay and unauthorized employment.

Although the applicant's criminal history cannot be condoned, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. In discretionary matters, the applicant bears the full burden of proving her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the waiver application is approved.

ORDER: The motion is granted and the waiver application is approved.