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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
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Services

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FILE: Office: CALIFORNIA SERVICE CENTER Date: JAN 08 2010

IN RE:

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and 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 been convicted of crimes involving moral turpitude. The applicant is married to a U.S. citizen. He seeks a waiver of inadmissibility in order to reside in the United States.

The 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. *Director's Decision*, at 3, dated November 13, 2006.

On appeal, the applicant details the hardship that his family would experience and states that he has led a life of value since 1987. *I-290B Supplement*, at 1-3, received, December 6, 2006.

The record includes, but is not limited to, the applicant's I-290B and supplement. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant was convicted of Burglary in violation of former Florida Statutes § 810.02(3)(a) on December 3, 1984.

Former Florida Statutes § 810.02(3)(a)states, in pertinent part:

> If the offender does not make an assault or battery or is not armed, or does not arm himself, with a dangerous weapon or explosive as aforesaid during the course of committing the offense and the structure or conveyance entered is a dwelling **or** there is a human being in the structure or conveyance at the time the offender entered or remained in the structure or conveyance, the burglary is a felony of the second degree...

The record indicates that the applicant entered an occupied premise, therefore, he was convicted of a crime involving moral turpitude. *See Matter of Louissaint*, 24 I&N Dec. 754 (BIA 2009). The applicant was also convicted of grand theft in violation of former Florida Statutes § 812.014(1)(2)(a) on April 7, 1986. As the record reflects that the applicant's theft conviction involved a permanent taking, the AAO finds that his grand theft conviction involved moral turpitude. *See Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973). As such, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Section 212(a)(2)(A) of the Act states 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:

(h) 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 . . .

The record reflects that the activity resulting in the applicant's convictions occurred in September 1984. The AAO notes that an application for admission or adjustment is a "continuing" application, adjudicated based on the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). The date of the decision is the date of the final decision, which in this case, must await the AAO's finding regarding the applicant's eligibility for a waiver of inadmissibility. The applicant's Form I-485 remains pending and section 212(h)(1)(A) of the Act applies to the applicant as the activity resulting in the applicant's conviction occurred more than 15 years prior to the final decision on the applicant's adjustment of status application.

In order to be eligible for a section 212(h)(1)(A) waiver, the applicant must demonstrate that his admission to the United States would not be contrary to its national welfare, safety, or security and that he is rehabilitated. The record indicates that the applicant is self-employed as the owner of a nursery. *Form G-325, Biographic Information*, dated August 23, 2008. There is no indication that the applicant has ever relied on the government for financial assistance. The record reflects that the applicant was sentenced to five years probation. The applicant violated his probation and was sentenced to 364 days imprisonment in 1986. The record reflects that the applicant was subsequently

convicted of resisting arrest without violence on January 22, 1996, a Miami-Dade County Ordinance Violation on August 17, 1999 and a Florida Litter Law violation in or around January 2000. There is no indication that the applicant is involved with terrorist-related activities. Therefore, the record evidences that admitting the applicant to the United States would not be contrary to its national welfare, safety, or security and the applicant is rehabilitated.

The granting of the waiver is discretionary in nature. There are several favorable discretionary factors for the applicant. The applicant has been married to his U.S. citizen spouse for over 17 years and has two U.S. citizen children. The record indicates that they would undergo hardship in his absence. The record reflects that the applicant has consistently filed taxes and that in 2002 the Juvenile Dependency Division, Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County placed his niece and nephew in his home for foster care. The record includes letters from family members attesting to the applicant's good character and the important role he has played in their lives. The AAO notes that more than 25 years have passed since the actions that led to the applicant's convictions.

The unfavorable factors include the applicant's criminal convictions; exclusion and deportation order; and his failure to surrender in response to that order.

Although the applicant's criminal history is serious and cannot be condoned, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret,* 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.