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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[REDACTED]

FILE: [REDACTED] Office: LOS ANGELES, CA

Date: JUN 18 2001

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(h) of the Immigration and Nationality Act, 8 U.S.C. 1182(h)

IN BEHALF OF APPLICANT:

[REDACTED]

Public Copy

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The application in this matter was denied by the District Director, Los Angeles, California, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected. The decision of the district director will be withdrawn, and the matter will be remanded to him for further consideration and action.

The applicant is a native of Mexico who was found to be inadmissible to the United States under § 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 seeks the above waiver of this permanent bar to admission as provided under § 212(h) of the Act, 8 U.S.C. 1182(h), in order to remain in the United States and reside with his U.S. citizen spouse and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, counsel states that the applicant's spouse personally prepared the applicant's waiver request without the assistance of counsel and that, consequently, the Service found no evidence of extreme hardship. On appeal, counsel submits a declaration from the applicant's spouse concerning the hardships she and the couple's children would experience if the applicant were removed from the United States.

Counsel states that additional supporting documentation will "shortly [sic]" follow his filing of the appeal. Since more than four months have passed and no new information or documentation has been received, a decision will be rendered based on the present record.

However, the present record is so devoid of supporting documentation that it is impossible to adjudicate the matter on appeal. Service instructions at O.I. 103.3(c) provide, in part, that the record of proceeding must contain all evidence used in making the decision; including the following items arranged from top to bottom in the following order:

- (1) Notice of Entry of Appearance as Attorney (Form G-28).
- (2) Brief, statement, and/or supporting evidence.
- (3) Notice of Appeal to the Administrative Appeals Office (Form I-290B).
- (4) Decision.
- (5) Notice of intent to take adverse action and response.
- (6) Investigative reports and/or other derogatory information.

(7) Application or petition (Form I-601).

(8) Evidence in support of application or petition.

Although the record contains the Form I-601 application, the district director's decision, and the appeal, there is no evidence contained in the record of the applicant's criminal history, or that his misdemeanor conviction(s) warrant a finding of inadmissibility under § 212(a)(2)(A)(i)(I) of the Act. Therefore, the district director's decision will be withdrawn.

The appeal of the district director's decision will be rejected, and the record will be remanded to him so that he can adjudicate the case based on documentation contained in the record of proceeding. If that decision is adverse to the applicant, the district director will certify his decision to the Associate Commissioner for review accompanied by a properly prepared record of proceeding.

ORDER: The district director's decision is withdrawn. The matter is remanded to him for further action consistent with the foregoing discussion and entry of a new decision which, if adverse to the applicant, is to be certified to the Associate Commissioner for review.