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U.S. Department of Justice
Immigration and Naturalization Service

**Identifying data deleted to
prevent clearly unwarranted
invasion of privacy**

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

[Redacted]

File:

Office: MANILA, PHILIPPINES

Date: **OCT 02 2002**

IN RE: Applicant:

[Redacted]

Application:

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

IN BEHALF OF APPLICANT:

[Redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

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 that 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

[Signature]

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Assistant Officer in Charge, Manila, Philippines, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who was found by a consular officer to be inadmissible to the United States under 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 a crime involving moral turpitude. The applicant is the father of a naturalized United States citizen son and is the beneficiary of an approved petition for alien relative. He seeks a waiver of this permanent bar to admission in order to travel to the United States to reside.

The assistant officer in charge concluded that the applicant's conviction of homicide renders him ineligible for a waiver of inadmissibility and denied the application accordingly.

On appeal, counsel states that murder is the unlawful killing of a human being with malice aforethought, that malice is defined as deliberate intentional killing, and that the applicant's conviction of homicide does not constitute murder under U.S. law. Rather, counsel asserts that the applicant's conviction of homicide constitutes a conviction of manslaughter under U.S. law. Counsel notes that manslaughter is an unlawful killing without malice and that the applicant had no intent to kill his victim. Counsel also notes that the applicant was sentenced to two years, four months, and one day to eight years and one day and, that under U.S. law, this is a sentence range typically imposed for manslaughter, not murder. Finally, counsel asserts that the applicant has had no other arrests or convictions, and that he has been completely rehabilitated.

The record reflects that on January 22, 1963, the applicant was accused in Lamas, Cagayan, Philippines, of the crime of Homicide. The Criminal Complaint document contained in the record specifically accuses the applicant of:

" . . . on or about the 14th day of January, 1963 . . . did . . . willfully, unlawfully and feloniously, without any just motive, and with intent to kill....assaulted , attacked and wounded . . . [the victim] . . . with a pointed knife . . . thereby inflicting upon [the victim] nineteen (19) wounds, which directly caused the instant death of said [victim]."

The applicant pled guilty to the above charge at his arraignment on January 30, 1963 and was convicted of the charge on February 4, 1963.

Section 212(a) of the Act states:

CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-
Except as otherwise provided in this Act, aliens who are
ineligible under the following paragraphs are ineligible
to receive visas and ineligible to be admitted to the
United States:

* * *

(2) CRIMINAL AND RELATED GROUNDS.-

(A) CONVICTION OF CERTAIN CRIMES.-

(i) IN GENERAL.- Except as provided in clause (ii),
an alien convicted of, or who admits having
committed, or who admits committing such 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 states:

The Attorney General may, in his discretion, waive
application of subparagraphs (A)(i)(I),...if-

(1)(A) in the case of any immigrant it is established to
the satisfaction of the Attorney General 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 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; and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection. (Emphasis added.)

The record reflects that the applicant was charged and convicted of homicide. He is clearly inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act.

On appeal, counsel asserts that the applicant's conviction does not constitute murder under U.S. law and that he is therefore statutorily eligible for the waiver requested. Counsel has failed to submit credible documentary evidence to support his assertion. The assertion of counsel does not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). Therefore, the appeal will be dismissed.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing eligibility remains entirely with the applicant. Matter of Ngai, 19 I&N Dec. 245 (Comm. 1984). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.