



U.S. Citizenship
and Immigration
Services

[REDACTED]

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FILE:

[REDACTED]

Office: BALTIMORE, MD

Date: APR 15 2005

IN RE:

[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)

ON BEHALF OF APPLICANT:

[REDACTED]

PUBLIC COPY

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the district director will be withdrawn and the application declared moot.

The applicant is a native and citizen of Canada who was found 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 spouse of a citizen of the United States and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his spouse.

The district director concluded that the applicant had failed to submit a final disposition for the 12 counts of bank fraud with which he was charged in Grenada. *Decision of the District Director*, dated November 6, 2002.

On appeal, counsel contends that the applicant does not require a waiver because he has not been convicted on any charges. Counsel further asserts that if the applicant must file the Form I-601 waiver, he has established that his spouse would suffer extreme hardship as a result of his inadmissibility to the United States. *Form I-290B*, dated June 9, 2003.

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

- (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 . . . 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)(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 district director's decision indicates that, during an interview with an officer, the applicant stated that he had been charged with bank fraud in Grenada. *See Decision of the District Director*. Based on the fact that the applicant failed to provide the Immigration and Naturalization Service [now Citizenship and Immigration Services] with a final disposition regarding the charges brought against him, the district director found the applicant inadmissible pursuant to section 212(a)(2)(A) of the Act.

The AAO notes that section 212(a)(2)(A) of the Act declares "any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of" a crime involving moral turpitude to be inadmissible. The record on appeal fails to establish that the applicant has been convicted of, admits having committed or admits committing acts which constitute the essential elements of a crime involving moral turpitude. The applicant, therefore, does not require a waiver of inadmissibility, so the appeal will be dismissed, the decision of the district director will be withdrawn and the waiver application will be declared moot.

ORDER: The appeal is dismissed, the prior decision of the district director is withdrawn and the application for waiver of inadmissibility is declared moot.