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FEB 22 2005

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FILE:

[Redacted]

Office: LOS ANGELES, CALIFORNIA

Date:

IN RE:

[Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico and is the beneficiary of an approved petition for alien relative filed by his U.S. citizen son. He was found to be inadmissible pursuant to § 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act) for having been convicted of a crime involving moral turpitude (attempted murder) on February 28, 1983. The applicant seeks a waiver of inadmissibility pursuant to § 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his spouse and children.

The district director concluded that the applicant was statutorily ineligible for a waiver of the grounds of inadmissibility and that the applicant had failed to otherwise qualify for a waiver pursuant to § 212(h) of the Act. The application was denied accordingly. On appeal, the applicant asserts that his lawful permanent resident wife and five U.S. citizen children will suffer extreme hardship if he is not allowed to remain with them in the United States.

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

(1) 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 . . . [is inadmissible].

(ii) Exception. — Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The applicant in the present case was over 18 years of age when he committed the crime of attempted murder, and he was sentenced to more than one year of imprisonment for the crime. Thus, he does not meet the requirements for an exception as set forth in § 212(a)(2)(A)(ii) of the Act.

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

The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . if-

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that-

(i) [T]he 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, or

(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 and

(2) the Attorney General [Secretary], 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

The applicant in this case was convicted of attempted murder under California Penal Code § 187(a). Therefore, pursuant to § 212(h)(2) of the Act, the applicant is statutorily ineligible for a waiver of inadmissibility under § 212(h) of the Act.

Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether the applicant has established extreme hardship to his wife or children or whether he merits the waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under § 212(h) of the Act, the burden of establishing that the application merits approval rests with the applicant. *See* § 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

ORDER: The appeal is dismissed.