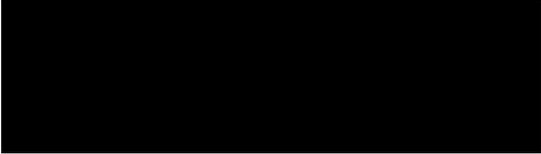




U.S. Citizenship
and Immigration
Services

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FILE:



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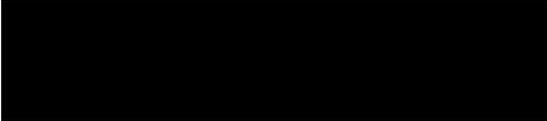
Date: SEP 26 2005

IN RE:



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:



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 application was denied by the Officer in Charge, Madrid, Spain. The matter is now before the Administrative Appeals Office (AAO) on appeal. The officer in charge's decision will be withdrawn and the matter remanded for entry of a new decision.

The applicant is a native and citizen of Morocco. The officer in charge found the applicant 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 at least two crimes involving moral turpitude. In his decision on the waiver application, however, the officer in charge referred to § 212(i) of the Act, which is the section of law regarding the waiver of grounds of inadmissibility under § 212(a)(6)(C), for having attempted to procure admission into the United States by fraud or misrepresentation. The record indicates that the reference to crimes involving moral turpitude was erroneous, and the decision suggests that the actual basis of the finding of inadmissibility was a misrepresentation in violation of § 212(a)(6)(C). The district director denied the waiver application upon determining that the applicant had failed to establish that her inadmissibility would impose extreme hardship on her U.S. citizen husband.

The officer in charge's decision was based on an erroneous statement of fact regarding crimes committed by the applicant. The record contains insufficient evidence upon which to base a finding of inadmissibility on account of a misrepresentation of a material fact in order to gain a benefit under the Act. The matter is returned to the officer in charge in order to render a waiver decision based on the evidence of record, and, if necessary, to gather sufficient evidence for the record to support the decision of the officer in charge. If the applicant is found to be inadmissible, the officer in charge must afford the applicant reasonable time to provide pertinent evidence and to address the issue of her misrepresentation. The officer in charge shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The officer in charge's decision is withdrawn. The application is remanded to the officer in charge for entry of a new decision, which, if adverse to the applicant, is to be certified to the AAO for review.