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U.S. Citizenship  
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invasion of personal privacy

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[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date:

111 09 2008

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]

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. Wieman, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director, California Service Center and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying application is moot.

The record reflects that the applicant is a native and citizen of Cuba who was found to be inadmissible to the United States pursuant to 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 married to a U.S. citizen and has a U.S. citizen child. He applicant seeks a waiver of inadmissibility in order to reside with his family in the United States.

The director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Director's Decision*, dated February 28, 2008.

On appeal, counsel for the applicant asserts that Citizenship and Immigration Services (CIS) erred and abused its discretion in denying the applicant's waiver request. He contends that the applicant has established by clear and convincing evidence that his removal from the United States would result in extreme hardship to his qualifying family members. *See Form I-290B, Notice of Appeal or Motion*, dated March 27, 2008. Counsel also indicates that he will file a brief and/or evidence in support of the appeal within 30 days. However, as of this date, the record does not include these additional materials. Accordingly, the record will be considered complete.

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

(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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) states in pertinent part that:

(h) The Attorney General [now Secretary of Homeland Security] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-

(1)(A) [I]t is established to the satisfaction of the Attorney General 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,

(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.

The record indicates that the applicant first entered the United States as the beneficiary of an approved Form I-129F, Petition for Alien Fiancé(e), on August 23, 2002; married the U.S. citizen, [REDACTED], who petitioned for him; and acquired lawful permanent resident status on January 26, 2004, based on an immigrant visa petition filed by [REDACTED]. On March 10, 2004, the inspection of the applicant at Miami International Airport was deferred based on the report of a 2003 arrest. He was subsequently found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude.<sup>1</sup> On August 24, 2005, the applicant was placed in removal proceedings, which were terminated to allow the applicant to apply for adjustment with CIS.

On July 9, 2007, the applicant applied for lawful permanent resident status pursuant to section 1 of Pub. L. 89-732, as amended (Cuban Refugee Act of November 2, 1966). On December 20, 2007, he filed the Form I-601, Application for Waiver of Grounds of Inadmissibility, seeking a waiver of the bar to admission in section 212(a)(6)(C)(i)(I) of the Act. On February 28, 2008, the director denied the Form I-601. She also denied the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, finding the applicant to be inadmissible to the United States based on his 2004 convictions for burglary and grand theft, crimes involving moral turpitude.

The applicant has filed an appeal of the director's denial of the Form I-601 so that he may adjust to lawful permanent residence under the Cuban Refugee Act of November 2, 1966. However, the applicant does not need to seek adjustment under the 1966 act. The record before the AAO establishes that the applicant has already been granted the status of lawful permanent resident as a result of CIS' January 26, 2004 approval of the Form I-485 he filed in 2003, and there is no evidence in the record that the applicant has lost his resident status. The record does not demonstrate that, as a result of his placement in removal proceedings, the applicant's lawful permanent residency has been terminated. There is also no evidence that CIS has rescinded the applicant's status under the regulatory requirements at 8 C.F.R. § 246.1.

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<sup>1</sup> The AAO notes that at the time of the applicant's inspection on March 10, 2004, he had not yet been convicted of the crimes for which he was subsequently determined to be inadmissible. Although the applicant was charged on April 2, 2003 with two counts of burglary and two counts of grand theft under sections 810.02 and 812.014(2)(C) of the Florida Statutes, he was not convicted on any of these charges until June 3, 2004. *See Information for State of Florida vs. Carlos Miguel Rodriguezvega, Alexi [sic] Hernandez, Circuit Court of the Seventeenth Judicial Circuit In and For Broward County, State of Florida*, dated April 2, 2003; *see also Circuit Court Disposition Order In and For Broward County, Florida*, dated June 3, 2004. It does not appear that the applicant was inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act on the date he presented himself for inspection as a returning resident at Miami International Airport.

The AAO notes the applicant's convictions for burglary and grand theft, and that these convictions may subject him to removal as an applicant for admission under the definition in section 101(a)(13)(C) of the Act, i.e., as a lawful permanent resident who has committed a crime identified in section 212(a)(2) of the Act. In the present matter, however, the applicant's convictions do not require him to file a Form I-601 waiver request. He has already been granted lawful permanent resident status, the benefit he seeks to obtain through submission of the Form I-601. The waiver application is, therefore, moot and the AAO will dismiss the appeal on that basis.

**ORDER:** The appeal is dismissed as the underlying waiver application is moot.