

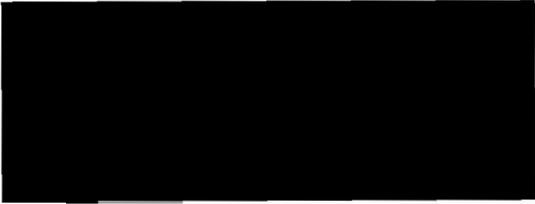


U.S. Citizenship
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FILE  Office: MANILA, PHILIPPINES Date: **SEP 16 2008**

IN RE: Applicant: 

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: 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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-In-Charge (OIC), Manila, Philippines, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as moot.

The applicant is a native and citizen of the Philippines 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 committed a crime involving moral turpitude. The record indicates that the applicant's brother is a naturalized United States citizen and the applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his United States citizen brother.

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, that:

Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in his discretion, waive the application of subparagraphs (A)(i)(I)...of subsection (a)(2) if—

(1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] 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 established to the satisfaction of the [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...

(2) the [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.

In the present application, the record indicates that the applicant married his first wife on April 17, 1966. On January 21, 1981, the applicant's brother filed a Petition to Classify Status of Alien Relative For Issuance of Immigrant Visa (Petition) on behalf of the applicant. On January 25, 1981, the applicant's Petition was approved. On June 18, 1984, the applicant married his second wife. On July 1, 2005, a judge in the Regional Court of Bulacan, Third Judicial Region, Republic of the Philippines, determined that the applicant's second marriage was null and void because the applicant was still married to his first wife. *See Decision, Civil Case No. 13-M-05*, dated July 1, 2005. On September 20, 2005, the applicant filed an Application for Waiver of Grounds of Excludability (Form I-601). On May 8, 2006, the OIC denied the Form I-601, finding the applicant failed to establish that "he possesses a qualifying relative upon whom extreme hardship can be established." *Decision of the OIC*, dated May 8, 2006.

On appeal, the applicant "respectfully appeal[s] for reconsideration to expedite completion within the required processing time and concerns due the beneficiaries." *Form I-290B*, filed June 2, 2006. The applicant states he and his brother "are orphans of USAFE WWII war veteran. [The applicant's brother] served in the US Navy, as a surgeon and a lieutenant commander, retired after thirty (30) years of service due to pelvic surgery in 2002...[The applicant's brother], upon joining the service, immediately initiated the petition, a long wait that took almost 24 years to realize...Needless the say the extreme hardships cannot be measured in terms of material support made available of long preparations, but the thought of failure in reuniting with [the applicant's] only brother." *Attachment to Form I-601*, filed September 20, 2005.

The AAO finds that the OIC improperly determined that the applicant is inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude.¹ The AAO notes that bigamy is a crime in the Philippines; however, the applicant was not convicted of the crime of bigamy. *See The Revised Penal Code of the Philippines, Chapter 2, Article 349*. Since there was no conviction, the applicant must have admitted to the essential elements of bigamy to be found inadmissible under section 212(a)(2)(A)(i)(I) of the Act. In order for the admission of acts which constitute the essential elements of a crime to be properly used as a basis for inadmissibility, three conditions

¹ The AAO conducts the final administrative review and enters the ultimate decision for USCIS on all immigration matters that fall within its jurisdiction. The AAO reviews each case *de novo* as to all questions of law, fact, discretion, or any other issue that may arise in an appeal that falls under its jurisdiction. Because the AAO engages in *de novo* review, the AAO may deny an application or petition that fails to comply with the technical requirements of the law, without remand, even if the district or service center director does not identify all of the grounds for denial in the initial decision. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

must be met, including: 1) the admitted acts must constitute the essential elements of a crime in the jurisdiction in which they occurred; 2) the respondent must have been provided with the definition and essential elements of the crime prior to making the admission, and; 3) the admission must have been voluntary. *Matter of K-*, 7 I&N Dec. 594, 596-98 (BIA 1957). The AAO notes that the applicant entered into a second marriage before his first marriage was legally dissolved; therefore, his actions constitute the essential elements of the crime of bigamy in the Philippines. *See The Revised Penal Code of the Philippines, Chapter 2, Article 349*. However, there is no evidence in the record that the applicant was provided with the essential elements of the crime of bigamy. Additionally, there is no evidence that the applicant admitted to committing the crime of bigamy. *See Gonzalez-Martinez v. Landon*, 203 F.2d 196, 197 (9th Cir. 1953) (admitting to commission of the crime of bigamy is a crime involving moral turpitude). The only evidence in the record of the applicant committing bigamy is the decision of the judge for the Regional Court of Bulacan, Third Judicial Region, Republic of the Philippines, wherein she stated the applicant was in a bigamous marriage. The AAO finds that the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act for committing a crime involving moral turpitude.

Since the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act, he does not need to apply for an application for waiver of grounds of excludability.

ORDER: The appeal is dismissed as moot as it has not been established that the applicant is inadmissible.