U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CHICAGO, ILLINOIS Date: SEP 27 2006

IN RE: Applicant: [redacted]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under § 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h); Application for Permission to Reapply for Admission into the United States after Deportation or Removal

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. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Application for a Waiver of Inadmissibility was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision. The AAO also remands the district director's decision to deny the Application for Permission to Reapply for Admission into the United States after Deportation or Removal.

The district director found that the applicant was inadmissible to the U.S. pursuant to § 212(a)(9)(C)(i)(II), as an alien who reentered the United States without admission after having been deported. The AAO notes, however, that this particular finding was in error, as § 212(a)(9)(C)(i)(II) applies only to those aliens who reenter or attempt to reenter the United States on or after April 1, 1997 after having been ordered removed from the United States. *See June 17, 1997 INS Memo on Inadmissibility, Unlawful Presence* The record reflects that on March 17, 1993, the applicant was deported due to a felony conviction for possession of firearms. According to the record, he reentered the United States on September 15, 1996; hence, he is not inadmissible under § 212(a)(9)(C)(i)(II) of the Act.

The AAO finds that the applicant is inadmissible to the United States pursuant to § 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. 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.

A waiver is available under § 212(h) of the Act, which states in pertinent part that:

> (h) The Attorney General 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 applicant committed the crime of criminal possession of a weapon on December 30, 1990, over 15 years prior to his application for admission. The applicant is therefore statutorily eligible for consideration of a waiver pursuant to § 212(h)(1)(A) of the Act. The district director failed to consider this issue in denying the Form I-601 application for the waiver of inadmissibility.

In addition, in his decision denying the Form I-212 application for consent to reapply for admission after deportation, the district director concluded that the applicant was ineligible to apply for relief from within the United States. On appeal, counsel contends that 8 CFR § 212.2(e) allows for the filing of a Form I-212 application while the applicant is still in the United States. The AAO concurs with counsel's assertion in this respect.

The district director must afford the petitioner reasonable time to provide evidence pertinent to the issues of his eligibility for a waiver of inadmissibility under § 212(h)(1)(A) of the Act and his eligibility for permission to reapply for admission after removal, and to provide any other evidence the district director may deem necessary. The district director shall then render a new decision based on the evidence of record as it relates to the 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 district director's decision is withdrawn. The application is remanded to the director for entry of a new decision, which if adverse to the applicant, is to be certified to the AAO for review.