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U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE:



Office: JACKSONVILLE, FLORIDA

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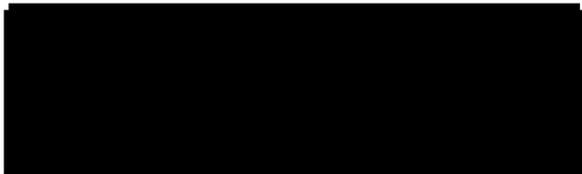
IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h), 8 U.S.C. § 1182(h), of the Immigration and Nationality Act.

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Jacksonville, Florida, and is now before the Administrative Appeals Office (AAO) on appeal.

The applicant is a native and citizen of Trinidad who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). On May 21, 2007, the field office director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The applicant filed a timely appeal.

On November 18, 2009, the field office director, citing 8 C.F.R. § 103.2(b)(13)(ii), and denied the applicant's Application to Register Permanent Resident or Adjust Status (Form I-485) on the ground that she failed to appear for a scheduled interview. 8 C.F.R. §103.2(b)(13)(ii) provides:

Failure to appear for biometrics capture, interview or other required in-person process. Except as provided in 8 CFR 335.6, if USCIS requires an individual to appear for biometrics capture, an interview, or other required in-person process but the person does not appear, the application or petition shall be considered abandoned and denied unless by the appointment time USCIS has received a change of address or rescheduling request that the agency concludes warrants excusing the failure to appear.

8 C.F.R. §103.2(b)(13)(ii) indicates that if an individual fails to appear for a scheduled interview the person's application is considered abandoned and denied, unless by the appointment time U.S. Citizenship and Immigration Services receives a change of address or rescheduling request and it warrants excusing the failure to appear. In the instant case, the applicant's Form I-485 was denied by the field office director due to failure to appear, and the record does not convey that there was a change of address or rescheduling request. We note that abandonment of an application or petition is not waivable under section 212(h) of the Act. Since the Form I-485 was denied on the basis of abandonment, no purpose would be served in the adjudication of the underlying Form I-601. There is no longer a pending Form I-485 and approval of a waiver of inadmissibility will not cure the deficiency that resulted in the denial of that application. Thus, the Form I-601 is moot and the appeal will be dismissed.

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