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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

H2

Date: AUG 16 2012 Office: ROME FILE: [redacted]

IN RE: Applicant: [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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Maria Kelly

Perry Rhew
Chief, Administrative Appeals Office

[redacted]

DISCUSSION: The waiver application was denied by the Field Office Director, Rome, Italy, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Tunisia 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. Counsel does not contest this finding of inadmissibility on appeal. In addition, the record establishes that the applicant was removed from the United States in June 1998. The applicant subsequently re-entered the United States without authorization on multiple occasions and was consequently removed in August 1998, March 2003, June 2004 and October 2005. As such, the field office director further noted that the applicant is also inadmissible under section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II). As a result of the applicant's removal and subsequent entry to the United States without being admitted, the field office director concluded that the applicant is not eligible to request consent to reapply for admission until October 2015. As such, the Application for Waiver of Ground of Inadmissibility (Form I-601) was denied as a matter of discretion. *Decision of the Field Office Director*, dated December 19, 2011.

In support of the appeal, counsel for the applicant submits a brief. Counsel asserts that the applicant is eligible to apply for admission under the exception provided under section 212(A)(9)(A)(iii) of the Act. Further, counsel asserts that the applicant is not subject to section 212(a)(9)(C) of the Act because he contends that said section applies to aliens who are currently unlawfully present in the United States. Alternatively, counsel argues that even if section 212(a)(9)(C)(i)(I) applies to aliens petitioning for relief from outside the United States, the section does not apply to the applicant since he has not accumulated over one year of unlawful presence in the United States. *See Brief in Support of Appeal*, dated February 22, 2012. The entire record was reviewed and considered in rending this decision.

Section 212(a)(2)(A)(i)(I) of the Act provides, in pertinent part:

> (A)(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) of the Act provides, in pertinent part:

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

> (1) (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 [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 . . . .

Section 212(a)(9) of the Act states in pertinent part:

> ....
>
> (C) Aliens unlawfully present after previous immigration violations.-
>
> (i) In general.-Any alien who-
>
> > (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or
> >
> > (II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,
> >
> > and who enters or attempts to reenter the United States without being admitted is inadmissible.
>
> (ii) Exception.- Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

The record clearly establishes that the applicant is inadmissible under section 212(a)(9)(C)(i)(II) as a result of the applicant's removal and subsequent multiple entries to the United States without being admitted.[1] An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission unless the alien has been outside the United States for more than ten years since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006).

To avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the applicant's last departure was at least ten years ago, the applicant has remained outside the United

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[1] As the AAO concurs with the field office director that the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act as a result of the applicant's removal and subsequent entries to the United States without being admitted, it is not necessary to address whether section 212(a)(9)(C)(i)(I) of the Act applies to the applicant as well.

States *and* USCIS has consented to the applicant's reapplying for admission. In the present matter, the applicant's last departure from the United States occurred in October 2005. He is currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating his waiver under section 212(h) of the Act.

Having found the applicant statutorily ineligible for relief at this time, no purpose would be served in discussing whether he has established extreme hardship to a qualifying relative or whether he merits a waiver as a matter of discretion. In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.