(b)(6)

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

[redacted]

DATE: NOV 12 2013 Office: TUCSON File: [redacted]

IN RE: Applicant: [redacted]

APPLICATIONS: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Tucson, Arizona, denied the application for permission to reapply for admission after removal, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who resided in the United States as a Lawful Permanent Resident from April 14, 1977 to December 17, 2007, when he was removed to Mexico. He was found to be inadmissible 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 based on two separate felony counts of automobile theft in November 2002 and May 2004. The applicant is the beneficiary of an approved Petition for Alien Relative filed by one of his three U.S. citizen children and seeks permission to reapply for admission after removal under section 212(a)(9)(A)(iii) in order to return to the United States.

The field office director concluded that, as the applicant had not applied for or been granted a waiver of inadmissibility, no purpose would be served in approving his application for permission to reapply as he is otherwise inadmissible to the United States. The application was denied accordingly. *See Decision of the Field Office Director,* August 3, 2012.

On appeal, filed in September 2012 and received by the AAO in August 2013, counsel for the applicant asserts that his client's medical condition and his failure to raise the relief of cancellation of removal for which he was eligible warrant reexamination of whether he should be granted a favorable exercise of the Secretary's discretion allowing him to reapply for admission.

Section 212(a)(9)(A) provides, pertinent part:

> (i) Arriving Aliens. – Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal … is inadmissible.
>
> (ii) Other Aliens. – Any alien not described in clause (i) who—
>
> (I) has been ordered removed under section 240 or any other provision of law, or
> (II) departed the United States while an order of removal was outstanding,
>
> and who seeks admission within 10 years of the date of such alien's departure or removal … is inadmissible.
>
> (iii) Exception. – Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the

Attorney General [now, Secretary of Homeland Security, "Secretary"] has consented to the alien's reapplying for admission.

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

(A) Conviction of certain crimes

(i) In General.- Except as provided in clause (ii), any 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 [Secretary] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . if--

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General [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 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 . . . . and

(2) the Attorney General [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.

. . . No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for

> permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

An application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. *See Matter of Martinez-Torres,* 10 I&N Dec. 776 (reg. Comm. 1964). Thus, no purpose would be served in allowing such an alien to reapply for admission if he is otherwise inadmissible and has not filed an application for waiver of his inadmissibility. The applicant in this case was convicted of two separate counts of theft under Arizona law and sentenced to a one-year term of imprisonment on each count, the sentences to be served concurrently. He was issued a Notice to Appear on July 6, 2007 charging him with removability under section 237(a)(2)(A)(ii) of the Act, 8 U.S.C. § 1227(a)(2)(A)(ii), as an alien convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct. On August 1, 2007, an Immigration Judge ordered him removed and he was removed on December 17, 2007. The applicant has not filed for a waiver of inadmissibility pursuant to section 212(h) of the Act.

In addition to having filed no waiver application, the applicant may be statutorily ineligible for a waiver of inadmissibility because he was convicted of an aggravated felony after being admitted to the United States as a Lawful Permanent Resident. An aggravated felony as defined in section 101(a)(43)(G) of the Act includes a theft offense for which the term of imprisonment is at least one year. Having been lawfully admitted as a permanent resident and thereafter convicted of an aggravated felony, the applicant appears to be ineligible for a waiver of inadmissibility under section 212(h)(2) of the Act. As noted, because the applicant is inadmissible, and statutorily ineligible for relief, no purpose would be served in discussing whether he is entitled to a favorable exercise of discretion.

In proceedings for consent to reapply for admission, the burden of establishing that the application merits approval rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

ORDER: The appeal is dismissed.