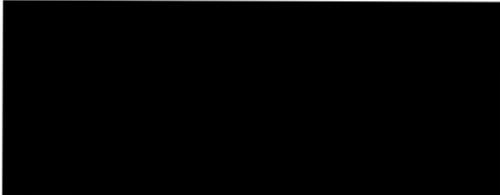


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FILE:

Office: EL PASO, TEXAS

Date: NOV 29 2006

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(g) NOV 29 2006

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 District Director, El Paso, TX denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected, as the waiver application was improperly filed.

The applicant, [REDACTED] (Mr. [REDACTED]) is a native and citizen of Mexico, who became a lawful permanent resident (LPR) pursuant to the amnesty provisions of the Immigration Reform and Control Act of 1986 on May 31, 1989. On February 29, 2000, he was removed from the United States due to a conviction in Texas for felony Driving Under the Influence (DUI). In order to reunite with his U.S. citizen (USC) wife, five USC children, and two LPR children, Mr. [REDACTED] filed an Application for Waiver of Ground of Inadmissibility (Form I-601), pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).

The record reflects that on October 8, 1987, Mr. [REDACTED] was convicted of DUI. On August 19, 1993, he was convicted of his 2<sup>nd</sup> DUI and on May 27, 1999, he was convicted of Felony DUI. Mr. [REDACTED] received a 10 year suspended sentence for this last conviction. The Immigration Judge (IJ) and the Board of Immigration Appeals (BIA) found that this conviction was an aggravated felony. As a result of having been convicted of an aggravated felony, the district director found the applicant ineligible to apply for a waiver under section 212(h). *District director's decision, dated, March 15, 2004.*

On appeal, Mr. [REDACTED] asserts that he is eligible to have his residency restored because he was only convicted of DUI-related offenses.

The AAO finds that Mr. [REDACTED] is eligible to apply for a waiver under section 212(h). The appeal, however, must be rejected, as the record reflects that Mr. [REDACTED] is outside the United States and has filed his Form I-601 with the wrong office.

The regulation at 8 C.F.R. § 212.7(a)(1)(i) states that an applicant shall file the Form I-601 with the United States consular office considering the immigrant visa application. The record reflects that Mr. [REDACTED] was removed from the United States on February 29, 2000. The Form I-601, dated August 9, 2001, is signed by Mr. [REDACTED] wife, [REDACTED]. In the space for Mr. [REDACTED]'s address, the town of Coahuila was originally listed and then crossed out. Mr. [REDACTED] address is listed as care of (c/o) his wife's address in Midland, Texas. The Form I-290B, Notice of Appeal, filed on April 9, 2004, is signed by Mr. [REDACTED] wife on his behalf. Mrs. [REDACTED] wife has not indicated that Mr. [REDACTED] returned to the United States after his removal in 2000. As the record indicates that Mr. [REDACTED] is currently outside of the United States, he would need to file his Form I-601 with the consulate where he plans to submit his immigrant visa application.

The AAO notes that the record does not contain an approved Petition for Alien Relative (Form I-130), filed on his behalf by his wife, which would allow Mr. [REDACTED] to apply for an immigrant visa. At the hearing before the IJ, Mr. [REDACTED] former counsel asserted that Mr. [REDACTED]'s relief from removal was adjustment of status based on his marriage to a USC. Counsel stated that Mr. [REDACTED] wife was in the process of filing a Form I-130 on his behalf, but no Form I-130 was found in the file. Nor is there any indication in Service electronic records that a Form I-130 was filed. It is unclear whether Mr. [REDACTED] wife ever filed a Form I-130 on his behalf.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be rejected.

**ORDER:** The appeal is rejected.