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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: NEWARK, NJ

Date: SEP 14 2006

IN RE:

[Redacted]

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

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 district director denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the waiver application declared moot.

The applicant is a native and citizen of Guatemala who was found to be inadmissible to the United States pursuant to § 212(a)(9)(C)(i)(I), 8 U.S.C. § 1182(a)(9)(C)(i)(I), for having been unlawfully present in the United States for more than one year; and section 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i), for having misrepresented a fact material to his case. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director determined that there was no evidence in the record that the applicant's wife was a legal permanent resident (LPR) and that the applicant did not have a qualifying family member upon which the waiver application could be based. The director found that applicant was inadmissible for having entered twice without inspection, for having been unlawfully present in the United States for more than one year, and for having omitted, on his Form I-485, the fact on that he had been arrested by the police several times.

On appeal, counsel asserts that the applicant made a timely retraction and admitted at his interview to his two arrests. Counsel does not address the issue of whether the applicant has a qualifying relative upon which to base his I-601 waiver application.

Regarding unlawful presence after previous immigration violations, the AAO finds that the applicant is not inadmissible pursuant to section 212(a)(9)(C)(i)(II). This section of the Act only applies to individuals who were unlawfully present for more than one year, departed the United States after April 1, 1997, and then subsequently apply for admission. The record indicates that the applicant's last departure from the United States was in 1989. He has not triggered the unlawful presence bar because he did not depart the United States after the effective date of this section of the Act.

Regarding misrepresentation about his criminal convictions, a timely retraction will serve to purge a misrepresentation and remove it from further consideration as a ground for section 212(a)(6)(C)(i) ineligibility. *9 FAM 40.63 N4.6*. Whether a retraction is timely depends on the circumstances of the particular case. *Id.* In general, it should be made at the first opportunity. *Id.* If the applicant has personally appeared and been interviewed, the retraction must have been made during that interview. *Id.* Counsel asserts that the applicant timely retracted his misrepresentation during his interview. *I-290B filed November 15, 2004*. The record contains a Form I-72 request for evidence dated July 26, 2002, the date of the applicant's adjustment of status interview. The Form I-72 requests dispositions for an arrest on August 26, 1989 in Dade County, Florida and for an arrest on April 24, 1997 in Passaic, New Jersey.¹ The record indicates that the applicant obtained dispositions for these two arrests within less than a week after his adjustment interview and immediately submitted them to the district office. The record indicates that the

¹ The AAO notes that the dispositions of Mr. [REDACTED] arrests indicate that the 1989 charge was dismissed and that one of the two counts in 1997 was dismissed. On September 29, 1997, Mr. [REDACTED] was found guilty of criminal mischief pursuant to § 2C:17-3A(1) of the New Jersey Penal Code, was given no jail sentence and paid a fine of \$1,064. The AAO finds that this conviction is not a crime involving moral turpitude.

applicant did make a timely retraction at his interview and is therefore not inadmissible for misrepresentation of a material fact.

The AAO does not find the applicant inadmissible for unlawful presence or misrepresentation. Therefore, it is not necessary to address the issue of whether the applicant has a qualifying family member upon which to base his Form I-601 waiver application, as there was no need to file the waiver application.

ORDER: The appeal is dismissed and the waiver application declared moot.