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U.S. Citizenship  
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Services

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FILE:

Office: VIENNA, AUSTRIA

Date: DEC 30 2006

IN RE:

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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink that reads "John F. Grissom".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The Officer-in-Charge (OIC), Vienna, Austria, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be dismissed.

The applicant, [REDACTED] is a native of Macedonia who was found 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 committed a crime involving moral turpitude. The applicant sought a waiver of inadmissibility under section 212(h) of the Act, which the OIC denied, finding the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the OIC*, dated June 29, 2006. The applicant submitted a timely appeal but made no statement on appeal.

The applicant was found inadmissible under Section 212(a)(2) of the Act, which states that:

(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:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . 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 . . .

As shown by the record, in 1976 the applicant was convicted of what appears to be a sexual act with a minor child. He was sentenced to one year in prison, with a two-year deferral of the sentence if the applicant did not engage in another criminal act. In 1978, he was convicted of robbery and had a three-month prison sentence, and in 1986 he had two convictions of wood robbery art, with a one-month prison sentence for one of the convictions and a monetary penalty for the other conviction.

For a waiver under section 212(h)(1)(A) of the Act, the person needs to establish that the activities for which he or she is inadmissible occurred more than 15 years before the date of his or her application for a visa, admission, or adjustment of status. The applicant filed a waiver application in July 2005; and on June 29, 2006, the OIC denied that waiver application. All of the crimes involving moral turpitude for which the applicant was found inadmissible occurred at least 20 years prior to his application for a visa, admission, or adjustment of status, as required by section 212(h)(1)(A)(i) of the Act.

Section 212(h)(1)(A)(ii) of the Act requires that the applicant's admission to the United States not be contrary to the national welfare, safety, or security of the United States; and that he has been rehabilitated. The applicant submitted no documentation to demonstrate that his admission to the United States would not be contrary to the national welfare, safety, or security of the United States; and that he has been rehabilitated.

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

**ORDER:** The appeal is dismissed and the application is denied.