

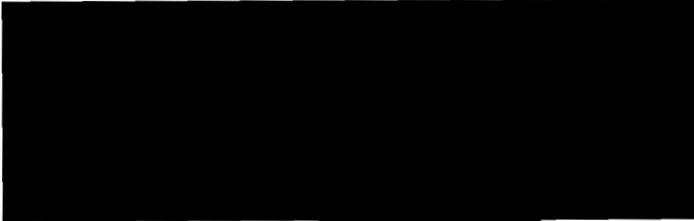
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U.S. Citizenship  
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FILE:



Office: MANILA, PHILIPPINES

Date: JAN 15 2008

IN RE:

Applicant:



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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer-In-Charge (OIC), Manila, Philippines, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant appears to be represented; however, the individual listed, as a representative on appeal is not authorized under 8 C.F.R. 292.1 or 292.2 to represent the applicant. The decision will be furnished only to the applicant.

The record reflects that the applicant is a native and citizen of the Philippines 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), as an alien convicted of a crime involving moral turpitude. The record indicates that the applicant is married to a naturalized United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his United States citizen spouse and children.

The OIC found that since the applicant was convicted of a crime involving moral turpitude and an aggravated felony, he is ineligible for a waiver under section 212(h) of the Act and he denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Officer-In-Charge's Decision*, dated April 17, 2007. Additionally, the OIC denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212), based on the applicant's aggravated felony conviction.

On appeal, the applicant states that the OIC's decision needs to be reviewed because it "is not in conformity [sic] with the law or with applicable precedents." *Form I-290B*, filed May 8, 2007.

The record includes, but is not limited to, affidavits and statements from the applicant, his wife, and his daughter, psychological evaluations for the applicant's wife, daughter, and son, trial court and appellate court dispositions for the applicant's criminal conviction, numerous documents regarding the applicant's removal case before the Executive Office for Immigration Review (EOIR), and reference letters from the applicant's friends and acquaintances. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on April 19, 2001, the applicant was convicted of criminal sexual abuse, and was sentenced to twenty-four (24) months probation.

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

(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, that:

- (h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in his discretion, waive the application of subparagraphs (A)(i)(I)...of subsection (a)(2) if—

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

- (2) the [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 provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. *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 [Secretary] to grant or deny a waiver under this subsection.

Emphasis added.

In the present application, the record indicates that on February 15, 1991, the applicant married [REDACTED], [REDACTED], in Illinois. On April 8, 1991, the applicant's wife filed a Form I-130 on behalf of the applicant, which was approved on May 15, 1991. On April 26, 1993, the applicant was admitted to the United States on an E-32 immigrant visa. On September 25, 1993, the applicant's daughter, [REDACTED], was born in Wisconsin. On November 16, 1995, the applicant's wife became a United States citizen. On September 5, 1996, the applicant's son, [REDACTED], was born in Illinois. On April 2, 1997, the applicant filed an Application for Naturalization (Form N-400), which he withdrew on June 3, 1998. On June 12, 1998, the applicant filed another Form N-400. On September 15, 2000, the applicant was arrested for aggravated criminal sexual abuse. On April 19, 2001, a judge in the United States District Court, Northern District of Illinois, convicted the applicant of criminal sexual abuse and sentenced the applicant to twenty-four (24) months of probation. On July 14, 2001, the applicant's second Form N-400 was denied because of the applicant's sexual abuse of a minor conviction. On November 2, 2001, the applicant filed an appeal of his criminal conviction with the Appellate Court of Illinois, Second District. On April 1, 2002, a Warrant for Arrest of Alien (Form I-200) was issued against the applicant. On April 2, 2002, a Notice to Appear (NTA) was issued against the applicant. On April 8, 2002, the applicant filed a Petition for Habeas Corpus with the United States District Court, Northern District of Illinois. On or about April 19, 2002, the applicant filed a motion to terminate the EOIR proceedings against him. On May 24, 2002, an immigration judge ordered the applicant removed from the United States. On or about June 21, 2002, the applicant filed an appeal with the Board of Immigration Appeals (BIA). On September 23, 2002, the BIA affirmed the immigration judge's decision removing the applicant from the United States. On October 15, 2002, a Warrant of Removal/Deportation (Form I-205) was issued against the applicant. On November 26, 2002, the applicant's Petition for Habeas Corpus was granted by the United States District Court, Northern District of Illinois. On December 10, 2002, based on the Service's motion, the applicant's Petition for Habeas Corpus was dismissed. On December 13, 2002, the applicant was removed from the United States. On December 30, 2002, the applicant's wife filed a second Form I-130 on behalf of the applicant. On March 6, 2003, the applicant filed a Form I-212. On May 8, 2003, the criminal court's conviction was affirmed by the Appellate Court of Illinois, Second District. On November 16, 2004, the applicant's second Form I-130 was approved. On April 18, 2005, the District Director, Chicago, Illinois, denied applicant's Form I-212 because the applicant failed to file a Form I-601. On May 18, 2005, the applicant filed a motion to reopen the District Director's decision, which was granted. On June 22, 2005, the District Director, Chicago, Illinois, denied the applicant's Form I-212 because the applicant was statutorily inadmissible to the United States based on his aggravated felony conviction. On January 4, 2007, the applicant filed another Form I-212 and a Form I-601 with the USCIS

Manila Office. On April 17, 2007, the OIC/Manila denied the applicant's Form I-601 and Form I-212, finding the applicant statutorily ineligible for a waiver.

The applicant is seeking a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act. Eligibility for a waiver under section 212(h) is limited, in that:

....

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...

....

Since the applicant was convicted of an offense involving sexual abuse of a minor, an aggravated felony under section 101(a)(43) of the Act, after he was lawfully admitted for permanent residence to the United States, he is statutorily ineligible for a waiver under section 212(h) of the Act, and no purpose would be served in discussing whether the applicant has established extreme hardship to his United States citizen wife and children or whether he merits the waiver as a matter of discretion. Additionally, the applicant is inadmissible under section 212(a)(9)(A)(ii)(I) of the Act.

In proceedings for an 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.