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U.S. Citizenship
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FILE:

[Redacted]

Office: LONDON, ENGLAND

Date:

JUN 05 2008

IN RE:

[Redacted]

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 PETITIONER:

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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, London, England, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the United Kingdom who resided in the United States as a Lawful Permanent Resident from 1979 to 2000, when she was removed from the United States. The applicant is the daughter of a U.S. citizen and has one U.S. citizen daughter and one Lawful Permanent Resident daughter. She is the beneficiary of an approved Petition for Alien Relative. The applicant 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 (misapplication of auction drafts by a bank employee) on March 13, 1996. 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 her mother and U.S. Citizen children and grandchildren.

The officer-in-charge concluded that the applicant was statutorily ineligible for a waiver of grounds of inadmissibility because she was convicted of an aggravated felony after being admitted to the United States as a Lawful Permanent Resident. The application was denied accordingly. *See Decision of Officer-in-Charge* dated April 19, 2006.

On appeal, the applicant asserts that her mother and daughters will suffer extreme hardship if she is not permitted to return to the United States.

Section 212(a)(2)(A)(i) of the Act states in pertinent part:

- (1) Criminal and related grounds. —
 - (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 [now the Secretary of Homeland Security, “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) [T]he 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. . . .

The applicant in this case was convicted of misapplication of auction drafts by a bank employee in violation of 18 U.S.C. § 656. The applicant was issued a Notice to Appear on June 24, 1998 charging her with removability under section 237(a)(2)(A)(iii) of the Act, 8 U.S.C. § 1227(a)(2)(A)(iii), as an alien convicted of an aggravated felony after admission. The applicant's applications for withholding of removal and voluntary departure were denied by the immigration judge. In an appeal to the Board of Immigration Appeals (BIA), the applicant asserted that the crime for which she was convicted was not an aggravated felony, and the BIA held that crime was an aggravated felony and dismissed the applicant's appeal. *See Decision of Board of Immigration Appeals* dated December 13, 1999. Therefore, the applicant is statutorily ineligible for a waiver of inadmissibility under section 212(h) of the Act.

Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether the applicant has established extreme hardship to her mother or daughters or whether she merits the waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, 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 her burden.

ORDER: The appeal is dismissed.