

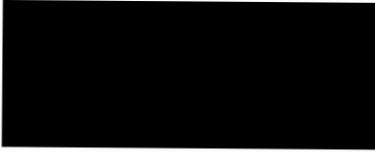
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U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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FILE: [REDACTED] Office: EL PASO, TEXAS

Date: JUN 10 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 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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, El Paso, Texas, 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 is a native and citizen of Mexico 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 committing a crime of moral turpitude. The applicant sought a waiver of inadmissibility under section 212(h) of the Act, which the district director denied, finding that the applicant failed to establish eligibility for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h). *Decision of the District Director, dated May 27, 2004.* The applicant submitted a timely appeal.

The record reflects that the applicant was removed from the United States on November 19, 2000, but it is not clear from the record as to whether the applicant is now physically present in Mexico or in the United States.

The applicant seeks admission into the United States after deportation or removal and filed an Application for Permission to Reapply for Admission Into the United States After Deportation or Removal, (Form I-212) as well as a Waiver of Inadmissibility (Form I-601). The regulation at 8 C.F.R. § 212.2 applies to applicants who seek consent to reapply for admission into the United States after deportation, removal or departure at government expense, and paragraph (d) of 8 C.F.R. § 212.2 pertains to immigrant visas. It states the following:

Except as provided in paragraph (g)(3) of this section, an applicant for an immigrant visa who is not physically present in the United States and who requires permission to reapply must file Form I-212 with the district director having jurisdiction over the place where the deportation or removal proceedings were held. Except as provided in paragraph (g)(3) of this section, if the applicant also requires a waiver under section 212(g), (h), or (i) of the Act, Form I-601, Application for Waiver of Grounds of Excludability, must be filed simultaneously with the Form I-212 with the American consul having jurisdiction over the alien's place of residence. The consul must forward these forms to the appropriate Service office abroad with jurisdiction over the area within which consul is located.

If the applicant is physically present in Mexico and seeks an immigrant visa and admission into the United States, the Forms I-212 and I-601 must be filed with the United States consulate in Mexico. As they were filed with the El Paso District office, they were improperly filed and must be denied.

The regulation at 8 C.F.R. § 212.7(a) allows for the filing of a Form I-601, for immigrant visas, adjustment of status, or parolees. The record before the AAO, however, does not reflect that the applicant filed an adjustment of status application, or a parole authorization. If the applicant is in the United States, the AAO finds that the I-601 application was improperly filed, as there is no underlying application, and must be denied.

Based upon the aforementioned discussion, the submitted waiver application shall be denied as improperly filed and the appeal dismissed.

ORDER: The appeal is dismissed.