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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H/2



FILE:



Office: HARLINGEN

Date:

NOV 28 2008

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 PETITIONER:



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, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Harlingen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under 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 (voluntary manslaughter). The applicant is the husband of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his wife.

The district director concluded that the applicant did not qualify for a waiver of inadmissibility because he was convicted of an aggravated felony as defined in section 101(a)(43)(F) of the Act. The application was denied accordingly. *See Decision of the District Director* dated May 19, 2005.

On appeal, counsel for the applicant states that U.S. Citizenship and Immigration Services (USCIS) erred in determining that a conviction of an aggravated felony is a ground of inadmissibility and that the applicant is ineligible for a waiver. On January 10, 2007, the applicant's wife submitted a letter indicating that she and the applicant were now divorced and that she wished to withdraw any petition she had filed on behalf of the applicant. *See letter from [REDACTED] and copy of divorce decree dated September 26, 2006.*

The applicant is no longer eligible for adjustment of status because the underlying Petition for Alien Relative has been withdrawn and the petitioner has divorced the applicant. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.