

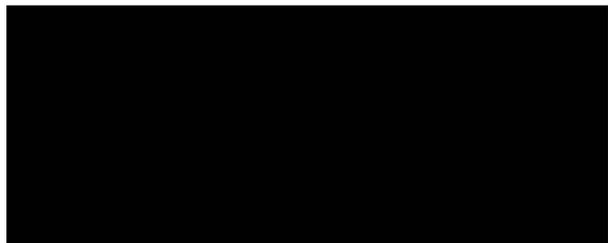
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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: NEW DELHI, INDIA

Date:

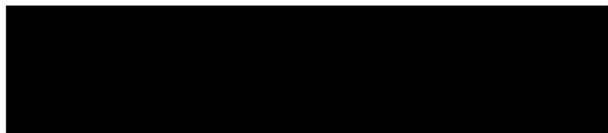
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IN RE:



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 Officer-in-Charge, New Delhi, India, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India who resided in the United States as a Lawful Permanent Resident from 1980 to 1993, when he was removed from the United States. The applicant is the spouse of a U.S. Citizen and the father of three U.S. citizen sons. He 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 crimes involving moral turpitude (rape and sexual battery) on December 6, 1985 in Fresno, California. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order return to the United States and reside with his wife and children.

The officer-in-charge concluded that the applicant was statutorily ineligible for a waiver of grounds of inadmissibility because he 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 June 14, 2006.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (USCIS) erred in determining that the applicant was ineligible for a waiver under section 212(h) of the Act. Counsel states that a 212(h) waiver is available to non-resident aliens seeking admission even where the underlying offense was an aggravated felony, and cites the decision of the Board of Immigration Appeals (BIA) in *Matter of Michel*, Int. Dec. 3335 (BIA 1998), to support this assertion. On appeal counsel requested 30 days in order to submit a brief and/or additional evidence. As of this date, over two years later, no additional statement or evidence has been submitted.

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

(2) 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. . . .**

(Emphasis added.)

The applicant in this case was admitted to the United States as a lawful permanent resident on January 10, 1980 and was convicted on November 6, 1985 of several crimes, including counts of sexual battery in violation of section 243.4 of the California Penal Code, oral copulation by force in violation of section 288a(c) of the California Penal Code, assault with a deadly weapon in violation of section 245(a)(1) of the California Penal Code, and rape by force in violation of section 261(2) of the California Penal Code. The applicant was issued an Order to Show Cause on September 24, 1992 charging him with deportability for having been convicted of two crimes involving moral turpitude. He was ordered deported on December 18, 1992 and removed from the United States on October 6, 1993.

Section 101(a)(43) of the Act provides, in pertinent part:

The term “aggravated felony” means –

(A) murder, rape, or sexual abuse of a minor;

(F) a crime of violence . . . for which the term of imprisonment is at least one year . . .

The applicant was convicted of rape, which constitutes an aggravated felony as defined in section 101(a)(43)(A) of the Act, and assault with a deadly weapon, which constitutes an aggravated felony as defined in section 101(a)(43)(F) of the Act because a sentence of one year was imposed. *See Superior Court of California, County of Fresno, Abstract of Judgment – Commitment* dated December 19, 1985. Both of these aggravated felony convictions occurred after the applicant was admitted as a Lawful Permanent Resident. 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 would otherwise qualify for a waiver under section 212(h) of the Act or whether he 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 his burden.

**ORDER:** The appeal is dismissed.