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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

H2

FILE:

Office: CHICAGO

Date: FEB 19 2009

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 APPLICANT:

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, Chicago, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying application is moot. The matter will be returned to the district director for continued processing.

The applicant is a native and citizen of Pakistan 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), for having been convicted of a crime involving moral turpitude. 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.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated November 30, 2005.

On appeal, counsel for the applicant asserts that the district director misapplied U.S. law pertaining to crimes involving moral turpitude, and that the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act. *Brief from Counsel*, dated January 18, 2006. Counsel asserts that the applicant's conviction was for conduct the applicant committed when he was a minor, thus the conviction should not serve as a basis for inadmissibility. *Id.* at 2.

The record contains briefs from counsel; documentation regarding the applicant's arrests and criminal conviction; a copy of the applicant's birth certificate; a copy of the applicant's marriage certificate; copies of birth records for the applicant's children, and; tax and mortgage records for the applicant. The entire record was reviewed and considered in rendering this decision.

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

- (i) [A]ny 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.

. . .

- (ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-
 - (I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application

for a visa or other documentation and the date of application
for admission to the United States . . .

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

- (1)(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 [now the Secretary of Homeland Security (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

The record reflects that the applicant pled guilty to one count of Attempt (Obstructing Justice), a Class A Misdemeanor under Illinois Compiled Statutes Chapter 720 § 5/8-4(a). He was convicted for conduct that he committed on November 17, 1998. As the applicant was born on December 1, 1980, he was 17 years old at the time of his culpable conduct. On October 7, 1999 the applicant was sentenced to 18 months of probation, 60 days of incarceration, and a fine and court costs. *Judgment Order*, dated October 7, 1999. While the record reflects that the applicant has been arrested on numerous other occasions, he has only one conviction.

Upon review, the applicant meets the exception to inadmissibility found in section 212(a)(2)(A)(ii)(I) of the Act. He committed his crime when he was under 18 years of age.¹ The applicant's conduct for which he was convicted occurred on November 17, 1998, more than five years prior to his ongoing application for admission pursuant to his Form I-485 application to adjust his status to permanent resident. The applicant was given a sentence of 60 days incarceration on October 7, 1999. The record shows by a preponderance of the evidence that the applicant did not continue to be incarcerated due to this sentence within the previous five years.

As the applicant's only conviction meets the exception in section 212(a)(2)(A)(ii)(I) of the Act, he is not inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act. The record does not show that the applicant is inadmissible under any other provision of the Act.

Based on the foregoing, the applicant is not inadmissible to the United States. Therefore, the present Form I-601 application for a waiver is moot.

ORDER: The appeal is dismissed as the underlying waiver application is moot. The district director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.

¹ It is noted that courts have held that an applicant may be ineligible for the exception in section 212(a)(2)(A)(ii)(I) of the Act if he was tried as an adult for conduct he committed prior to reaching age 18. See *Vieira Garcia v. INS*, 239 F.3d 409, 412-14 (1st Cir. 2001). Yet, the record of the applicant's conviction does not indicate that he was tried as an adult.