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20 Massachusetts Avenue N.W., Rm. 3000  
Washington, DC 20529-2090

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U.S. Citizenship  
and Immigration  
Services

[Redacted]

H2

FILE:

[Redacted]

Office: CIUDAD JUAREZ, MEXICO

Date: FEB 24 2009

[CDJ 2003 699 019 and [Redacted] relates]

IN RE:

Applicant:

[Redacted]

APPLICATIONS:

Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h), and Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i); and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

ON BEHALF OF APPLICANT:

[Redacted]

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.

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application and the application for permission to reapply for admission after removal were denied by the Officer in Charge (OIC), Ciudad Juarez, Mexico, in a single decision, and the matters are now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the OIC's decision withdrawn, and the applications declared moot.

The record reflects that the applicant is a native and citizen of Mexico 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 committed a crime involving moral turpitude, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresenting a material fact in an attempt to obtain an immigration benefit. The record indicates that the applicant is married to a naturalized United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his United States citizen spouse.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on his qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) and Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) accordingly. *Decision of the Officer in Charge*, dated March 22, 2006.

In the present application, the record indicates that the applicant entered the United States without inspection on an unknown date before August 5, 1995. On August 5, 1995, the applicant was arrested in Houston, Texas, for unlawfully carrying a weapon in Liquor License Premises. On September 13, 1995, the applicant was convicted of unlawfully carrying a weapon and was sentenced to two (2) years imprisonment. On July 19, 1996, the applicant was deported from the United States. On May 21, 1999, the applicant married [REDACTED] on the B&M International Bridge on the border of Texas and Mexico. On August 4, 1999, the applicant's spouse filed a Form I-130 on behalf of the applicant. On July 9, 2003, the applicant's Form I-130 was approved. On August 10, 2004, the applicant filed a Form I-212 and Form I-601. On March 22, 2006, the OIC denied the applicant's Form I-212 and Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relative.

The record reflects that the OIC found the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresenting that he entered the United States in May 1999 to marry his wife.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

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

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

In the present case, a review of the record reflects no indication that the applicant defrauded or willfully misrepresented a material fact in order to procure a visa. The record reflects that on May 21, 1999, the applicant and his wife married on the B&M International Bridge, which spans the border between Texas and Mexico. Additionally, the AAO notes that the applicant stated in his Form I-130 that he married on the Bridge. The record does not show that the applicant reentered the United States on May 21, 1999, or on any other date subsequent to his deportation. The AAO thus finds that the OIC erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.<sup>1</sup>

Additionally, the record reflects that the OIC found the applicant to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude.

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

- (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...or an attempt or conspiracy to commit such a crime...is inadmissible.

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

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<sup>1</sup> The AAO conducts the final administrative review and enters the ultimate decision for USCIS on all immigration matters that fall within its jurisdiction. The AAO reviews each case *de novo* as to all questions of law, fact, discretion, or any other issue that may arise in an appeal that falls under its jurisdiction. Because the AAO engages in *de novo* review, the AAO may deny an application or petition that fails to comply with the technical requirements of the law, without remand, even if the district or service center director does not identify all of the grounds for denial in the initial decision. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also*, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The [Secretary] may, in his discretion, waive the application of subparagraphs (A)(i)(I)...of subsection (a)(2) if—

(1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that—

(i)...the 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 established to the satisfaction of the [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...

(2) the [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.

Counsel asserts that “[a]n I-601 Waiver was not needed in this case since a conviction for unlawfully carrying a weapon is not a crime of moral turpitude conviction.” *Appeal Brief*, dated October 5, 2006. Counsel relies on *Matter of Granados*, 16 I&N Dec. 726, 728 (BIA 1979), where the Board of Immigration Appeals held that a “[c]onviction for possession of a concealed sawed-off shotgun is not...a crime involving moral turpitude that would render the respondent excludable under section 212(a)(9) of the Act.” *See also Navarro-Lopez v. Gonzales*, 503 F.3d 1063, 1974 (9<sup>th</sup> Cir. 2007) (“No court has ever found possession of a weapon to be a crime involving moral turpitude.”). The AAO finds that the OIC erred in concluding that the applicant is inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude. Therefore, the AAO finds that the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act, for committing a crime involving moral turpitude.

The AAO finds that since the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), he is

not required to file a Form I-601. As such, the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to sections 212(i) and 212(h) of the Act is moot and need not be addressed.

Additionally, the AAO finds that the applicant is no longer inadmissible under section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A). The AAO notes that the record establishes that the applicant has continued to reside in Mexico since his deportation on July 19, 1996. The applicant's wife states that after the applicant was deported to Mexico, he completed his education and military service, and has been working as a police officer in Mexico since 2001. *See letter from [REDACTED]*, dated September 11, 2006. The AAO finds that the applicant has been residing in Mexico for more than the statutory ten-year period. The applicant no longer needs permission to reapply for admission after his removal.

**ORDER:** The appeal is dismissed, the OIC's decision withdrawn and the applications declared moot. The matter is returned to the OIC for continued processing of the applicant's visa application.