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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: LOS ANGELES Date: **MAY 07 2009**

IN RE: Applicant: [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.

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Guatemala who was found 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 crimes involving moral turpitude. The applicant sought 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 U.S. citizen spouse and children.

The district director concluded that the applicant had 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 August 24, 2006.

In support of the appeal, the applicant submits the following documents: a brief, dated September 23, 2006; a hardship declaration and translation from the applicant's spouse, dated September 22, 2006; a support letter; and a psychological evaluation in regards to the applicant's spouse, dated September 20, 2006.

Section 212(a)(2)(A)(i)(I) of the Act provides, in pertinent part:

(A)(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.

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

The Attorney General [now Secretary, Homeland Security, (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 Attorney General (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 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
- (2) The Attorney General (Secretary), in his discretion . . . has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

On March 27, 2009, the applicant's U.S. citizen spouse, the petitioner of the Petition for Alien Relative (Form I-130), filed on behalf of the applicant in December 1997 and subsequently approved in October 1998, sent a letter to the U.S. Citizenship and Immigration Services (USCIS) in San Bernardino, California, advising said office that the applicant's spouse had initiated divorce proceedings against the applicant and thus no longer wished to sponsor the applicant for permanent residency. A copy of the Petition for Dissolution of Marriage filed with the Superior Court of California on November 21, 2008 was provided.

Section 205.1 of Title 8 of the Code of Federal Regulations states, in pertinent part:

- (a) Reasons for automatic revocation. The approval of a petition...made under section 204 of the Act...is revoked as of the date of approval:
 - (3) If any of the following circumstances occur...before the decision on his or her adjustment application becomes final:
 - (i) Immediate relative and family-sponsored petitions, other than Amerasian petitions. (A) Upon written notice of withdrawal filed by the petitioner...with any officer of the Service who is authorized to grant or deny petitions.

As the petitioner of the Form I-130 has provided written notice of withdrawal with respect to her sponsorship of the applicant, the Form I-601 submitted by the applicant can not be reviewed and adjudicated by the AAO, as there is no longer an underlying application for permanent residency relating to the applicant pending at this time.

ORDER: The appeal is dismissed.