

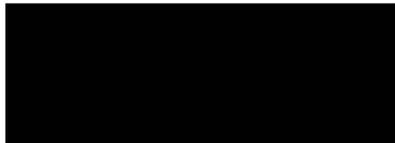
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE:



Office: NEW YORK, NY

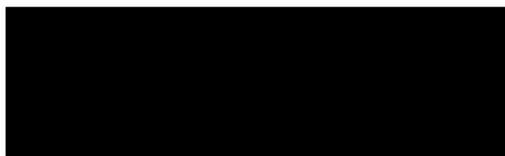
Date: SEP 03 2009

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.

A handwritten signature in cursive script, appearing to read "John F. Grissom".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the district director for action consistent with this decision.

The record reflects that the applicant is a native and citizen of Russia 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 crimes involving moral turpitude. The applicant has a U.S. citizen spouse and child, and she seeks a waiver of inadmissibility in order to reside with her family in the United States.

The district director found that the applicant had not established extreme hardship to her spouse, but she had established extreme hardship to her child. *District Director's Decision*, at 4, dated November 21, 2008. However, the Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied as a matter of discretion. *Id.*

On appeal, counsel asserts that the decision contains errors of law and fact, the district director did not consider all of the evidence, and the district director manifested a clear bias against the applicant. *Brief in Support of Appeal*, at 1, dated December 19, 2008.

The record includes, but is not limited to, counsel's brief, physician letters for the applicant's daughter, the applicant's spouse's statements, psychological evaluations of the applicant's spouse and daughter, letters of support, education-related and extracurricular-related documents for the applicant's daughter, and financial records. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on December 17, 2003 the applicant was convicted of Grand Larceny in the 4th Degree pursuant to New York Penal Code § 155.30, a crime involving moral turpitude. *See Matter of Scarpulla*, 15 I&N Dec. 139 (BIA 1974). As such, the applicant is inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act.¹

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-

¹ The AAO notes that the applicant was convicted on August 11, 1994 of Shoplifting under New Jersey Statutes Title 2C, Chapter 20-11, on November 2, 1998 of Retail Theft under Pennsylvania Statutes Title 18, § 3929, and on December 17, 2003 of Burglary in the 3rd Degree pursuant to New York Penal Code § 140.20 and Criminal Possession of Stolen Property in the 4th Degree pursuant to New York Penal Code § 165.45. As a finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act has already been made, the AAO will not determine whether these crimes involve moral turpitude.

- (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, that:

(h) 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

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. . . .

- (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 [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.

In the present matter, the AAO will not consider whether the record establishes that the applicant has established eligibility for a waiver under section 212(h) of the Act. It finds the record before it to indicate that the applicant may have already been married at the time of her 1996 marriage to her first U.S. citizen spouse. Accordingly, the record raises questions as to whether the applicant entered into her 1996 marriage solely for the purposes of circumventing U.S. immigration law and, therefore, whether, under section 204(c) of the Act, she is ineligible to benefit from the second Form I-130 petition that supports the instant Form I-485 and Form I-601 applications. Until this issue is resolved, the AAO finds that no purpose would be served in considering the applicant's Form I-601 appeal. The case will, therefore, be remanded to the district director for appropriate action.

Following a determination of the applicant's eligibility to benefit from the Form I-130 filed by her second husband, the Form I-601 appeal should be returned to the AAO for its consideration.

ORDER: The appeal is remanded to the district director for action consistent with this decision.