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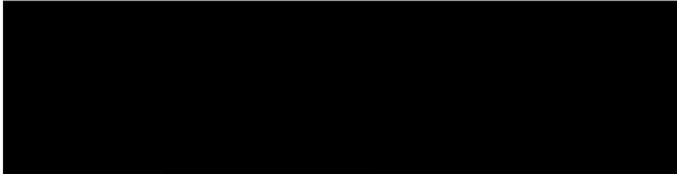
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

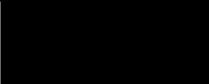


U.S. Citizenship
and Immigration
Services

H2



FILE:



Office:

LOS ANGELES

APR 23 2010
Date:

IN RE: Applicant:



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).

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant, a native and citizen of Nigeria, 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. children, born in 2003 and 2004.

The district director concluded that according to the record, the applicant had divorced his spouse and thus was statutorily ineligible to apply for an I-601 waiver. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *Decision of the District Director*, dated April 13, 2004.

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) (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

The record establishes that the applicant and his U.S. citizen spouse, the petitioner of the Petition for Alien Relative (Form I-130), filed on behalf of the applicant in June 1994 and subsequently approved in December 1995, were divorced in January 1999. A copy of the Request for Judgment, Judgment of Dissolution of Marriage, and Notice of Entry of Judgment, Superior Court of California, County of Los Angeles, dated January 26, 1999, was provided. The Form I-130 was revoked on March 2, 2004 accordingly.

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. (D) Upon the legal termination of the marriage when a citizen or lawful permanent resident of the United States has petitioned to accord his or her spouse immediate relative or family-sponsored preference immigrant classification under 201(b) or section 203(a)(2) of the Act....

As the record establishes the legal termination of marriage between the petitioner and the applicant, there is no longer an approved petition for alien relative on behalf of the applicant. The viability of the Form I-601, Application for Waiver of Grounds of Inadmissibility, is dependent on an adjustment of status application that is, in turn, based on an approved Form I-130, Petition for Alien Relative. In the absence of an underlying approved Form I-130, Petition for Alien Relative, the Form I-601, Application for Waiver of Grounds of Inadmissibility, is moot. The appeal of the denial of the waiver must therefore be dismissed as moot.

ORDER: The appeal is dismissed.