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



**U.S. Citizenship
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Services**

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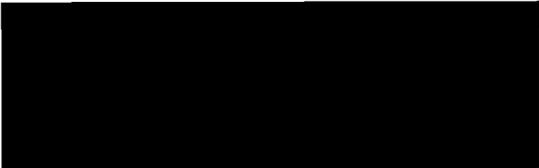


FILE: [REDACTED] Office: VIENNA Date: JUN 22 2010

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(h) and (a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h), (a)(9)(B)(v).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Vienna, Austria, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Romania 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 was additionally found inadmissible under section 212(a)(2)(B) of the Act, 8 U.S.C. § 1182(a)(2)(B), for having been convicted of two or more offenses for which the aggregate sentences to confinement were five years or more. The applicant was further found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant is also inadmissible under section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), for having been ordered removed under section 235(b)(1) or section 240 and entering the United States without being admitted. The applicant seeks waivers of his grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(h) and of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and (h).

The officer-in-charge 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 Officer-in-Charge*, dated October 18, 2007.

On appeal, counsel for the applicant asserts that the applicant's wife will suffer extreme hardship should the applicant be prohibited from residing in the United States, and that the applicant warrants a favorable exercise of discretion. *Brief from Counsel*, dated December 17, 2007.

The record contains, but is not limited to: a brief from counsel; statements from the applicant's wife; a copy of the applicant's wife's naturalization certificate; copies of birth records for the applicant's wife and son; a copy of the applicant's marriage certificate; financial, employment, and asset records for the applicant's wife; documentation regarding the applicant's criminal convictions; documentation regarding the applicant's proceedings in Immigration Court, before the Board of Immigration Appeals (BIA) and the U.S. Court of Appeals for the Seventh Circuit (Seventh Circuit), and; documentation regarding the applicant's prior removals from the United States. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2) of the Act states, in pertinent parts:

(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.

(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 was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

(B) Multiple criminal convictions.-Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

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

(1) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . if –

....

(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

Section 212(a)(9) of the Act provides, in pertinent parts:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.- Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

An applicant who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission unless more than 10 years have elapsed since the date of the applicant's last departure from the United States. *See Matter of Briones*, 24 I&N Dec. 355, 358-59 (BIA 2007); *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the applicant's last departure was at least ten years ago, the applicant has remained outside of the United States during that time, *and* that U.S. Citizenship and Immigration Services (USCIS) has consented to the applicant's reapplying for admission. *Matter of Briones*, 24 I&N Dec. at 358, 371; *Matter of Torres-Garcia*, 23 I&N Dec. at 873, *aff'd.*, *Gonzalez v. Dept. of Homeland Security*, 508 F.3d 1227, 1242 (9th Cir. 2007).

The conviction records in the file show that on July 8, 1982 the applicant was convicted in the Superior Court for the State of California, County of San Mateo, for the offense of Attempted Grand Theft, for which he was sentenced to six months of imprisonment (Case Number C11374). On August 18, 1995, he was convicted in the Circuit Court of Johnson County, Illinois for the offense of Perjury, for which he was sentenced to 24 months of probation (Case Number 95CF18). On May 9, 1996 he was convicted in the Circuit Court of Williamson County, Illinois for the offenses of Unlawful Possession of a Stolen Vehicle, Unlawful Possession of Essential Parts of a Vehicle with a

Falsified or Removed Vehicle Identification Number (VIN), and Unlawful Possession of a Weapon by a Felon, for which he was sentenced to a total of seven years of imprisonment (Case Number [REDACTED]).

Department of Homeland Security records show that the applicant was ordered deported on November 25, 1997. He departed the United States on March 30, 2001 pursuant to the deportation order after unsuccessful appeals before the BIA and Seventh Circuit. The applicant reentered the United States without inspection on or about June 3, 2003 at or about San Ysidro, California. On July 30, 2005 the applicant was detained by Illinois State Police when his car caught fire, and he was transferred to the custody of U.S. Immigration and Customs Enforcement on August 4, 2005. The applicant's prior order of deportation was reinstated on August 4, 2005. The applicant was removed to Romania on October 11, 2005.

Upon review, the applicant is inadmissible under section 212(a)(9)(C) of the Act due to the fact that he was ordered deported on November 25, 1997, he departed pursuant to that deportation order, and then reentered the United States without inspection on or about June 3, 2003. As the applicant last departed the United States when he was subsequently removed on October 11, 2005, he has not been out of the United States for a total of ten years since his last departure. Accordingly, he is currently statutorily ineligible to apply for permission to reapply for admission. As such, no purpose would be served in adjudicating his waiver requests under sections 212(a)(9)(B)(v) and 212(h) and of the Act.

The officer-in-charge did not indicate that the applicant is inadmissible under section 212(a)(9)(C) of the Act. However, an application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the field office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a de novo basis).

In proceedings regarding waivers of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(h) and of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden, in that he has not shown that a purpose would be served in adjudicating his waivers under sections 212(a)(9)(B)(v) and 212(h) and of the Act due to his inadmissibility under section 212(a)(9)(C) of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.