

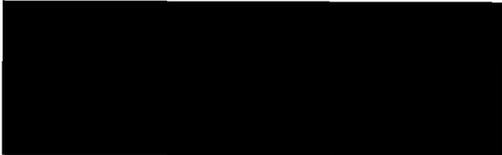
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U. S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



tt2

Date: **JUL 07 2011** Office: MILWAUKEE, WI FILE:

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:

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. The fee for a Form I-290B is currently \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Milwaukee, Wisconsin and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 crimes involving moral turpitude. The applicant seeks 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 child.

In a decision, dated January 16, 2009, the field office director found that the applicant had failed to demonstrate that his inadmissibility would result in extreme hardship to a qualifying relative and that because of the nature of his crime he would not have been entitled to a favorable exercise of discretion.

In an attachment to the Notice of Appeal to the AAO (Form I-290B), dated February 12, 2009, counsel states that the misconception regarding the applicant's term of imprisonment in regards to a criminal conviction in 2002 had an undue negative influence on the field office director's decision. Counsel also states that the hardship factors in the applicant's case are not limited to financial matters, but include emotional matters as well. He states that he will be submitting additional documentation on appeal.

The AAO notes that the applicant's waiver application was filed in connection with an Application to Register Permanent Residence or Adjust Status (Form I-485) filed on May 13, 2008. On November 21, 2008, the applicant's Form I-485 was denied by the Nebraska Service Center and the applicant filed a Motion to Reopen on November 26, 2008. On February 11, 2009, the Nebraska Service Center reopened the applicant's Form I-485, but again denied the application. The director of the Nebraska Service Center found that a careful review of the applicant's record failed to indicate that the applicant was admitted or paroled into the United States or, in accordance with section 245(i) of the Act, that he was the beneficiary of a properly filed immigrant petition or application for labor certification filed on or before April 30, 2001. The director found that the applicant was not able to adjust his status under section 245(a) or section 245(i) of the Act and denied the Form I-485 accordingly.

The necessity and viability of the Form I-601, Application for Waiver of Grounds of Inadmissibility, is dependent on eligibility to seek adjustment of status (with the exception of inadmissibility that may be resolved by means of a waiver), and an adjustment application. Consequently, the Form I-601 in this case is moot as the applicant is not otherwise eligible to adjust status. The appeal of the denial of the waiver must therefore be dismissed as moot.

ORDER: The appeal is dismissed.