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

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U.S. Citizenship
and Immigration
Services

[REDACTED]

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FILE: [REDACTED] Office: NEWARK, NJ Date: MAR 31 2011
(MT. LAUREL, NJ)

IN RE: [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:

[REDACTED]

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 \$630. 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 District Director, Newark, New Jersey and the applicant appealed the decision to the Administrative Appeals Office (AAO). The AAO withdrew the District Director's decision and remanded the matter to the District Director for the issuance of a new decision, which if adverse to the applicant was to be certificated to the AAO for review. On January 13, 2009, the District Director issued a new decision denying the application, which is now before the AAO. The District Director's denial of the waiver application will be affirmed.

The record reflects that the applicant is a native and citizen of Jordan 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 is the father of three U.S. citizens. He 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.

The District Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Inadmissibility, accordingly. *Decision of the District Director*, dated January 13, 2009; *Notice of Intent to Deny*, dated October 14, 2008.

In support of the waiver application, the record contains, but is not limited to, the following evidence: briefs from various attorneys who have represented the applicant; a statement from the applicant; medical statements and documentation relating to the applicant's children; school records and certificates for the applicant's children; and court records relating to the applicant's criminal convictions. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

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

(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:

(h) 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

The AAO will not, however, consider the applicant's inadmissibility under section 212(a)(2)(A)(i)(I) of the Act or determine whether the record establishes extreme hardship to a qualifying relative, as we do not find the current record or relevant United States Citizenship and Immigration Services (USCIS) data bases to reflect that he is the beneficiary of an approved immigrant visa petition on which to base a Form I-485, Application to Register Permanent Residence or Adjust Status, or the Form I-601 that is now before us.

The record contains a Form I-140, Immigrant Petition for Alien Worker, that was approved by the legacy U.S. Immigration and Naturalization Service (now USCIS) on December 26, 2002 in connection with the applicant's employment as a writer for [REDACTED]. However, the AAO finds the record to reflect that the applicant is no longer seeking adjustment based on the position indicated on the Form I-140 but on the position of manager of a 7-Eleven store. A November 19, 2010 letter from [REDACTED] indicates that the applicant has been employed by 7-Eleven for the past ten years and that he is the store manager for the [REDACTED]. The record also contains a November 8, 2005 letter addressed to [REDACTED] from a Certifying Officer, Employment and Training Administration, U.S. Department of Labor who states that he is enclosing the labor certification for the applicant's employment.²

The AAO notes that section 204(j) of the Act extends the validity of approved Form I-140s to new employment in the case of applicants whose adjustment of status applications remain adjudicated for 180 or more days, as long as their new employment is in the same or a similar occupational classification as the job for which the Form I-140 was originally filed. The record reflects that the applicant's Form I-485 was filed on July 5, 2001 and not adjudicated until July 2, 2002, a period greater than 180 days. However, the applicant's employment with 7-Eleven is not the same or similar to that for which the Form I-140 was previously approved, but an entirely unrelated job. Therefore, the Form I-140 in the record may not be extended to the applicant's employment with 7-Eleven and the AAO finds no underlying immigrant visa petition on which to base a Form I-485 adjustment application or the applicant's Form I-601.

In the absence of an approved Form I-140 petition covering his 7-Eleven employment, the applicant is not eligible to apply for adjustment of status. His application for adjustment cannot be approved

¹ The record also includes an approved Form I-130, Petition for Alien Relative, benefiting the applicant. However, this petition was based on the applicant's marriage to his first U.S. citizen wife. The applicant's current wife is seeking adjustment of status with him.

² The AAO notes that the letter issued by the Department of Labor instructs 7-Eleven to attach the labor certification to a Form I-140 and to submit both documents to USCIS. However, the AAO finds the record before us to contain no second approved Form I-140 or any evidence that a second Form I-140 was submitted by the applicant in connection with his employment with 7-Eleven.

regardless of whether he is eligible for a waiver of inadmissibility. Accordingly, the District Director's denial of the applicant's waiver application will be affirmed, albeit on a basis different from that identified in his January 13, 2009 decision.³

ORDER: The District Director's decision is affirmed.

³ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the original decision does not identify all of the grounds for denial. *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 (3^d Cir. 2004)(noting that the AAO conducts appellate review on a *de novo* basis).