

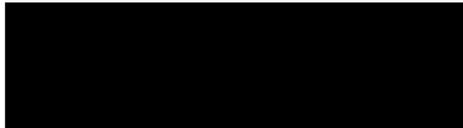
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

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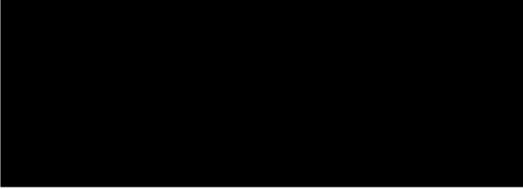


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Date: Office: CHICAGO FILE: 

NOV 09 2011
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:


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 Field Office Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines 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. He seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife and son.

The field office director denied the Form I-601 application for a waiver, finding that the applicant failed to establish that he has been rehabilitated, that a qualifying relative will experience extreme hardship upon denial of the waiver application, or that he merits a favorable exercise of discretion. *Decision of the Field Office Director*, dated May 14, 2009.

On appeal, counsel for the applicant asserts that the applicant has shown that his wife and son will suffer extreme hardship if the waiver application is denied. *Statement from Counsel on Form I-290B*, dated June 4, 2009. Counsel further contends that the field office director applied an erroneous hardship standard and interpretation of the applicant's criminal record. *Id.*

The record contains, but is not limited to: a statement from counsel; a psychological evaluation; tax records for the applicant and his wife; and documentation of the applicant's criminal history. Counsel indicated on Form I-290B that he would send a brief and/or evidence to the AAO within 30 days of filing the appeal. The appeal was filed on June 12, 2009. However, as of October 13, 2011, the AAO had received no further documentation or correspondence from the applicant or counsel. On October 13, 2011, the AAO sent a facsimile to counsel with notice that a brief or additional evidence had not been received, and affording five days in which to provide a copy of any missing filing. As of the date of this decision, the AAO has not received a response to the facsimile, and the record is deemed complete. The entire record was reviewed and considered in rendering this decision.

As a preliminary matter, the applicant filed his Form I-485 adjustment application on or about May 13, 2007. The applicant filed the present Form I-601 waiver application on or about April 23, 2009 due to a finding that he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The field office director denied the Form I-485 application on May 14, 2009. In his decision, the field office director identified two separate reasons for denying the application - the applicant's failure to obtain a waiver of his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act and his failure to show that he warrants a favorable exercise of discretion. The director emphasized that the discretionary basis for the denial was independent of the applicant's inadmissibility.

The requirements for filing a motion to reopen or motion to reconsider the denial of a Form I-485 application are provided in the regulation at 8 C.F.R. § 103.5. However, the record does not show that the applicant filed a motion with the field office director, and the denial of the Form I-485 application remains effective.

The present Form I-601 application for a waiver was filed incident to the applicant's Form I-485 application, in order to establish that he is admissible to the United States and eligible to adjust his status to lawful permanent resident. Yet, even should the applicant obtain a waiver of his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act, the discretionary basis for the denial of his Form I-485 application would remain. The AAO lacks jurisdiction to review the field office director's denial of the applicant's Form I-485 application or unfavorable exercise of discretion.¹ Therefore, no purpose would be served in fully assessing whether the applicant has shown that he is eligible for a waiver of his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

As the applicant has not shown that the present Form I-601 application will have an impact on the denial of his Form I-485 application, and the present Form I-601 is incident to the Form I-485 application, no purpose would be served in fully assessing whether the applicant has shown that he is eligible for a waiver of inadmissibility. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003).