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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



htz

Date: **APR 20 2012** Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE: Applicant: [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:

SELF-REPRESENTED

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,

f/ Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Honduras 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 lawful permanent resident wife and U.S. citizen children.

The director denied the Form I-601 application for a waiver, finding that the applicant failed to establish that a qualifying relative will experience extreme hardship upon denial of the waiver application. *Decision of the Director*, dated March 11, 2009.

On appeal, the applicant reasserts that his wife is suffering from significant illness, and he submits additional documentation relating to her medical care and prescription medication.

The record contains, but is not limited to: statements from the applicant and his wife; documentation relating to the applicant's wife's medical care; copies of birth certificates for the applicant's six children; and documentation in connection with the applicant's criminal convictions. The entire record was reviewed and considered in rendering this decision.

As a preliminary matter, the applicant filed a Form I-485 application to adjust his status to lawful permanent resident on or about November 10, 2003. The applicant filed the present Form I-601 application for a waiver on or about May 30, 2006 due to a finding that he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The director denied the Form I-485 application on June 28, 2006. The director clearly indicated that the reason for denying the Form I-485 application was the applicant's failure to show that he warrants a favorable exercise of discretion. On March 11, 2009, the director denied the applicant's Form I-601 application for a waiver, and reiterated that the applicant's Form I-485 application was denied on discretionary grounds, irrespective of whether the applicant obtained a waiver of his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

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. However, 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 director's denial of the applicant's Form I-485 application or unfavorable exercise of discretion.¹ Therefore,

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).

no purpose would be served in assessing whether the applicant has shown that he is eligible for a waiver under section 212(h) 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 application is incident to the Form I-485 application, no purpose would be served in 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.