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



**U.S. Citizenship
and Immigration
Services**

[Redacted]

Hz

DATE: **AUG 28 2012**

OFFICE: LOS ANGELES

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:

[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, Los Angeles, California, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The applicant filed a motion to reconsider that decision. The motion will be granted; however, the appeal will be dismissed and the application remains denied.

The applicant is a native and citizen of Belize 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 a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. Citizen daughter.

The District Director concluded that the applicant failed to establish the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of District Director* dated February 8, 2007. The AAO affirmed that the applicant had committed a crime involving moral turpitude, additionally finding that the applicant was not eligible for a waiver under section 212(h) of the Act because he had been convicted of attempted murder. *See Decision of AAO*, April 19, 2010.

On appeal, counsel for the applicant contends the AAO failed to fully weigh the extreme hardship that the applicant's daughter would experience given his inadmissibility.

Section 212(a)(2)(A) provides, *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) states, *in pertinent part*:

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I)... 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 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...

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture.

The record indicates that on January 1, 1976, the applicant intentionally and unlawfully caused a dangerous harm to [REDACTED]. The certificate from the Supreme Court of Belize reflects that the applicant was found guilty of attempted murder and was sentenced to 15 years imprisonment.

The applicant does not contest inadmissibility in his motion to reopen. The AAO therefore reaffirms that the applicant is inadmissible under section 212(a)(2)(A) of the Act for having been convicted of a crime involving moral turpitude.

Counsel for the applicant contends that the AAO erred in not evaluating the extreme hardship to the applicant's U.S. Citizen daughter. Counsel fails to acknowledge, however, that the issue of whether or not the applicant demonstrates the existence of extreme hardship to a qualifying relative in order to qualify for a waiver is not relevant. Regardless of a finding of extreme hardship, section 212(h) of the Act indicates that no waiver is available for an alien, like the applicant, who has been convicted of attempted murder.

In proceedings for a waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, although the motion to reconsider will be granted, the appeal will be dismissed, and the application remains denied.

ORDER: The motion is granted, the appeal dismissed and the underlying application denied.