

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



U.S. Citizenship
and Immigration
Services

[REDACTED]

H2

Date: **AUG 31 2012** Office: CALIFORNIA SERVICE CENTER [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h), 8 U.S.C. § 1182(h) of the Immigration and Nationality Act.

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Director, California Service Center. On July 15, 2010, the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion to reconsider will be dismissed, the appeal will be dismissed and the waiver application will be denied.

The record reflects that the applicant is a native and citizen of Cuba 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 director indicated that the applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, the AAO determined that the applicant was inadmissible under section 212(a)(1)(A)(iii) of the Act for having been convicted of battery/aggravated/great bodily harm, a crime involving moral turpitude. As to the section 212(h) waiver, the AAO found the applicant had established exceptional and extremely unusual hardship to a qualifying relative. However, the AAO determined that the gravity of the applicant's offense overrode the extraordinary circumstances in the applicant's case and concluded that a favorable exercise of discretion was not warranted.

On motion, counsel contends that the AAO should reconsider its decision. Counsel argues that the equities in the instant case, that the applicant is employed, has only one conviction, supports his family, and pays income taxes, outweigh the unfavorable factor (which is the conviction) against the applicant. Counsel asserts that the applicant has not committed any crimes since his conviction, and that the letter from the applicant's landlord substantiates that the applicant is not violent. Counsel also asserts that submitted letters demonstrate that the applicant is a caring father. Counsel contends that the applicant is regretful and ashamed of the actions which lead to his conviction, and even though the applicant claimed to have acted in self-defense, the applicant acknowledged that what he did was wrong. Counsel argues that the applicant's not having committed another crime and expressing remorse are indicative of rehabilitation. Counsel asserts that the AAO's reliance on *Matter of Mendez-Morales*, 21 I&N Dec. 296, 300 (BIA 1996), to deny the applicant's case was wrong. Counsel contends that the applicant's conduct is distinguishable from that of the respondent in *Matter of Mendez-Morales*, who had sexually abused a girl, solicited sexual favors, and expressed no remorse. Counsel argues that the only unfavorable factor against the applicant is the conviction.

The applicant submitted a letter on motion in which the applicant asserted that he was sorry for having made a mistake and is not making excuses for his behavior. The applicant stated that his "mistake was made at the beginning of my journey here in the U.S.A. I was completely ignorant to United States laws and I decided to take matters into my own hands and have paid for it ever since."

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration (USCIS) policy. 8 C.F.R. § 103.5(a)(3).

The present motion to reconsider alleges that the AAO was wrong to rely upon *Matter of Mendez-Moralez* to deny the present case because the applicant's conduct is distinguishable from that of the respondent in *Mendez-Moralez*. However, the AAO cited *Mendez-Moralez* only for a general discretionary standard, not to analogize the applicant's crime to that of the respondent in *Mendez-Moralez*. More specifically, the AAO relied upon 8 C.F.R. § 212.7(d), which sets forth a more stringent (and more recent) discretionary standard for cases involving violent or dangerous crimes. The AAO's citation to *Mendez-Moralez* was not outcome-determinative as suggested by counsel, and counsel has not presented any other pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. We are not persuaded that our decision was incorrect.

As the applicant has failed to overcome the grounds of denial and establish that the waiver application is approvable, the AAO's previous decision is affirmed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The applicant has not met that burden.

ORDER: The motion is dismissed.