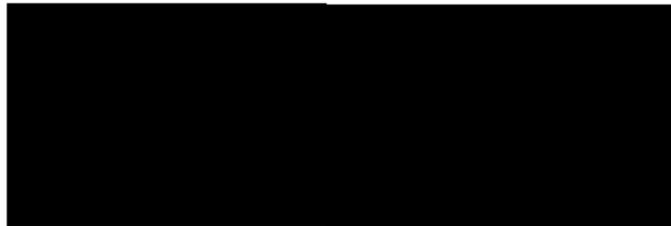


U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H2

DATE: **DEC 05 2012**

Office: SANTO DOMINGO, DR

FILE: 

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.

Thank you,

A handwritten signature in black ink that reads "Michael Shumway".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santo Domingo, Dominican Republic. The matter is now before the Administrative Appeals Office (AAO) on appeal. As the applicant is not inadmissible, the waiver application is unnecessary, and the appeal will be dismissed as moot.

The record reflects that the applicant is a native and citizen of the Dominican Republic who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for admitting to having committed acts which constitute the essential elements of a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in conjunction with an immigrant visa application, in order to obtain admission to the United States to join his U.S. citizen parents.

The Field Office Director found that the applicant to be inadmissible based on admissions made at his consular interview, indicating that he had committed murder. The director further found that the applicant had failed to establish extreme hardship to the qualifying relative for purposes of a waiver of inadmissibility under section 212(h) of the Act, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision*, dated September 2, 2010.

On appeal, counsel asserts that the director failed to properly consider both past and present hardships to the qualifying relative. *See Form I-290B, Notice of Appeal or Motion*, dated September 22, 2010. Counsel further contended that the applicant is also eligible for a waiver under the more lenient standard of section 212(h)(1)(A) of the Act.

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

(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.

The record indicates that the applicant resides permanently in the United States and is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on his behalf by his lawful permanent resident father. The record contains untranslated criminal records, showing that the applicant was arrested for murder in the Dominican Republic on or about October 31, 1994. The criminal records indicate that the applicant was released on bail, but do not include a disposition of the charges. However, a review of the administrative record shows that the director was satisfied that the murder charges were not pursued and that the applicant had no other pending charges against him. The record also contains a certification of no criminal record for the applicant issued by the Public Ministry in the Dominican Republic.

Although not convicted of the charges, the applicant was found inadmissible based on his admissions at

his consular interview on February 16, 2010, at which time the applicant admitted to the murder of his neighbor. Likewise, on his Forms I-601, dated August 18, 2010 and December 1, 2010, the applicant again admitted to the arrest for murder and to serving ten months in prison.

At the outset, we note that the AAO conducts appellate review of findings of fact and law on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Herrera v. U.S.C.I.S.*, 571 F.3d 881, 885 (9th Cir. 2009) (referencing *Montero v. Mukasey*, 548 F.3d 1248, 1250 (9th Cir. 2008) for the position that the court reviews that AAO's decision as the final agency determination, where the AAO conducts *de novo* review and issues its own decision). Accordingly, we review the director's finding of inadmissibility here on a *de novo* basis.

In *Matter of K-*, 7 I&N Dec. 594 (BIA 1957), the Board of Immigration Appeals (BIA) established the standard for determining the "validity" of an admission for purposes of inadmissibility under former section 212(a)(9) of the Act (now 212(a)(2)(A)(i) of the Act). The BIA held that a "valid admission of a crime for immigration purposes requires that the alien be given an adequate definition of the crime, including all essential elements, and that it be explained in understandable terms," a rule intended to insure "that the alien would receive fair play and to preclude any possible later claim by him that he had been unwittingly entrapped into admitting the commission of a crime involving moral turpitude." *Id.* at 597. The BIA held that the admission at issue in that case, which was made to a police officer and included in a sworn statement signed by the alien, could not be considered an admission of acts constituting the essential elements of a crime involving moral turpitude because the notification requirement had not been met. *Id.* at 596-97.

In this case, the director indicates that the applicant admitted to murdering his neighbor at his consular interview. However, the administrative record does not support this assertion. In reviewing the applicant's Form I-601 and the untranslated, unsworn and unsigned statement of the applicant in the record, the AAO notes that the applicant admits to being charged with and taking responsibility for the murder, but asserts that it was in fact his cousin who actually shot and murdered the victim. Moreover, even if the applicant made an admission to murder, it does not comport with the requirements set forth in *Matter of K-*, in that there is no indication that the applicant was given an adequate definition of the crime of murder, including all essential statutory elements, or that it was explained in understandable terms. We further note that although the record does not contain a copy of the underlying criminal statute for murder in the Dominican Republic, the applicant's admission does not indicate that he had any intention to commit murder. Rather, he alleges that shooting happened when the victim and two others came to the applicant's home to kill the latter's family. Thus, even if the applicant had admitted to shooting the victim, it does not qualify as an admission to commission of a crime involving moral turpitude where there was no admission to a "knowing or intentional" bad conduct. *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992) (noting that moral turpitude exists where depraved conduct is accompanied by vicious motive or a corrupt mind).

Therefore, the AAO finds that the evidence in the record is insufficient to support a finding that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Because the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act, and the AAO is aware of no other basis of inadmissibility, the applicant's waiver application is unnecessary and must be dismissed as moot.

ORDER: As the applicant is not inadmissible, the waiver application is unnecessary and the appeal is dismissed as moot. The matter is returned to the field office director for further action consistent with this decision.