

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

H2



Date **DEC 18 2012** Office: CALIFORNIA SERVICE CENTER

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,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico. She 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 having been convicted of Crimes Involving Moral Turpitude (CIMTs).¹ The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h) in order to remain in the United States.²

The Director concluded that the applicant had failed to establish that she was eligible to file an application for waiver, and that the evidence in the record was not sufficient to establish that a qualifying relative would experience extreme hardship. The Director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on January 29, 2008. The AAO dismissed an appeal of the Director's decision on December 17, 2010.

The regulation at 8 C.F.R. § 103.5(a) states that any motion to reopen and/or reconsider a proceeding before the service filed by an applicant or petitioner, must be filed within 30 days of the decision that

¹ The record reflects that the applicant was convicted of Theft - \$50 - \$500, Texas Penal Code (Tex. Penal Code) § 31.03(e)(2), on October 3, 1995 and again on June 8, 1999 in the Harris County District Court, Houston, Texas.

² Section 212(h) of the Act provides, in pertinent part:

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if-

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status.

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(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.

the motion seeks to reopen and/ reconsider, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that a delay was reasonable and was beyond the control of the applicant or petitioner.

The record indicates that the AAO issued its decision on December 17, 2010. The AAO properly gave notice to the applicant that she had 30 days to file a motion. The motion was not received until February 28, 2012, more than one year after the decision was issued. Accordingly, the motion was untimely filed.

There is no indication that failure to file within the time allotted was reasonable and was beyond the control of the applicant. The AAO therefore declines to exercise discretion and excuse the applicant's failure to file within 30 days of the decision pursuant to 8 C.F.R. §103.5(a)(1)(i). Accordingly, the motion will be rejected as untimely filed.

ORDER: The motion is rejected as untimely filed.