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

[redacted]

Date: DEC 3 1 2012 Office: ROME DISTRICT (LONDON) FILE: [redacted]

IN RE: Applicant: [redacted]

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

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of the United Kingdom who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to seek a benefit through fraud or the willful misrepresentation of a material fact; and section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed crimes involving moral turpitude. The record indicates that the applicant is the father of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), and section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his son and grandchildren.

The District Director found that the applicant had failed to establish that he has a qualifying relative for a waiver under section 212(i) of the Act and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated October 25, 2011.

On appeal, the applicant's son states the applicant's conviction occurred in 1980 and he does not pose a threat to U.S. national welfare, safety, or security. *Applicant's son's statement, attached to Form I-290B, Notice of Appeal or Motion*, filed November 21, 2011. Moreover, the applicant's son claims that the applicant did not attempt to misrepresent a material fact when he responded "No" to questions regarding his arrest and conviction record and if he had been previously denied a visa to visit the United States. *Id.* However, he states the applicant's "shame and knowledge that his criminal record was expunged caused him to respond 'no' on the I-94W Form." *Id.* Additionally, he claims the applicant warrants a discretionary waiver; he has no qualifying relative, as his wife and mother are deceased. *Id.*

The record includes, but is not limited to, statements from the applicant and his son, the applicant's sworn statement dated July 7, 1996, and the applicant's wife's death certificate. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
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> . . . .
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

> (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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

> (A) *Conviction of certain crimes.*—
>
> (i) In general.—Except as provided in clause (ii), any 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...

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

> Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The [Secretary] may, in [her] discretion, waive the application of subparagraphs (A)(i)(I)...of subsection (a)(2) if—
>
> (1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that—
>
> (i)...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 established to the satisfaction of the [Secretary] 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...

> (2) the [Secretary], in [her] discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

In the present case, the record indicates that on or about October 25, 1980, the applicant was convicted of theft and fraud and was ordered to pay a fine. The U.S. embassy in London subsequently denied him a nonimmigrant visa because of his crime involving moral turpitude. On July 7, 1996, the applicant applied for admission to the United States under the Visa Waiver Program, and on the Non Immigrant Visa Wavier Arrival/Departure Form (I-94W), the applicant stated "No" to the questions regarding if he had been arrested or convicted of a crime involving moral turpitude and if he had ever been denied a U.S. visa or entry into the United States.

On appeal, the applicant's son claims that the applicant answered the questions on the Form I-94W "in good faith and in no way attempted to misrepresent the actual facts." He states the applicant was traveling to the United States to be with his mother who was dying of cancer, and he was "under extreme distress." However, he indicates that the applicant has "tremendous feelings of shame and remorse" for his conviction and "[h]is shame and knowledge that his criminal record was expunged caused him to respond 'no' on the I-94W Form."

With respect to the willfulness of the applicant's misrepresentation, the Department of State Foreign Affairs Manual, Volume 9 § 40.63 N5, in pertinent part states that, "[t]he term 'willfully' as used in INA 212(a)(6)(C)(i) is interpreted to mean knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise." The AAO finds the applicant's claim that he is not inadmissible to the United States through the misrepresentation of a material fact because he was under distress and believed his criminal record was expunged to be unpersuasive. The AAO observes that in waiver proceedings, the burden of proof is on the applicant to establish admissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. Additionally, the applicant himself does not explain why he answered "no" to the question regarding if had ever been denied a U.S. visa or entry into the United States. The AAO finds that the applicant has not met his burden of proving he is not inadmissible. Accordingly, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) for willfully misrepresenting a material fact in order to seek admission into the United States.

Because the applicant is inadmissible under sections 212(a)(6)(C)(i) and 212(a)(2)(A)(i)(I) of the Act, he must demonstrate eligibility for a waiver under both sections 212(i) and 212(h). A section 212(h) waiver is dependent first upon a showing that the applicant is the spouse, parent, son, or daughter of a U.S. citizen or lawful permanent resident of the United States. However, a section 212(i) waiver is dependent upon a showing that an applicant is the spouse, son, or daughter of a U.S. citizen or lawful permanent resident of the United States. On July 5, 2009, the applicant's U.S. citizen son filed a Form I-130 on behalf of the applicant, which was approved on December 16, 2009. The applicant has a qualifying relative for a section 212(h) waiver but not for a section 212(i) waiver. The record does not establish that the applicant has the qualifying family member required for a waiver under section 212(i) of the Act. As the applicant is

ineligible for waiver consideration under both sections 212(h) and 212(i) of the Act, the appeal must be dismissed.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.