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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



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Date: **JAN 25 2012** Office: LOS ANGELES, CA 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,

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the field office director for further proceedings consistent with this decision.

The record reflects that the applicant is a native and citizen of France 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 committed a crime involving moral turpitude. The applicant's spouse and stepchild are U.S. citizens. He seeks a waiver of inadmissibility in order to reside in the United States.

The field office director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 17, 2009.

On appeal, counsel states that the offense in question occurred more than 15 years ago and the field office director disregarded the applicant's request for a waiver under section 212(h)(1)(A) of the Act. *Form I-290B*, received October 16, 2009.

The record includes, but is not limited to, counsel's brief, the applicant's statement, the applicant's spouse's statement and the applicant's criminal record. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant was convicted by the Criminal Court of the Department of Loire-Atlantic (France) on or about June 18, 1993 of being an accomplice to theft, committed by means of violence, under Articles 59, 60, 379 and 382 of the Penal Code of France in relation to theft of a jewelry store in 1978. He received a three year prison sentence of which two years were suspended.

The applicant is inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude. The applicant does not contest the finding of inadmissibility in his appeal.

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.

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if –

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

The decision reflects that the field office director only considered a waiver under section 212(h)(1)(B) of the Act. However, as the activities for which the applicant is inadmissible occurred more than 15 years before the date of the application for adjustment of status, he is eligible to file for a waiver under section 212(h)(1)(A) of the Act.

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.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 Attorney General [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.

The record reflects that the applicant entered the United States on February 8, 2006 under the Visa Waiver Program. Form I-94W asks, "Have you ever been arrested or convicted for an offense or crime involving moral turpitude..." The record is not clear as to whether the applicant disclosed his criminal conviction in response to this question. Therefore, the record is not clear as to whether the applicant willfully misrepresented a material fact to procure admission to the United States on February 8, 2006. The AAO is remanding this case to the field office director to address this issue with the applicant. In the event that the field office director finds the applicant inadmissible under section 212(a)(6)(C)(i) of the Act, the field office director will give the applicant an opportunity to present evidence to establish eligibility for a section 212(i) waiver. The field office director will also address the applicant's waiver application under section 212(h)(1)(A). In the event that the field office director finds the applicant ineligible for an I-601 waiver, he shall certify it to the AAO for review.

ORDER: The matter is remanded to the field office director for further proceedings consistent with this decision.