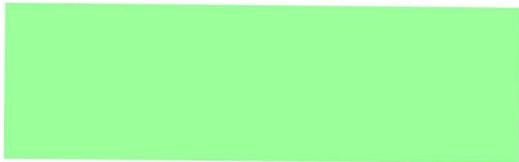


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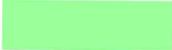


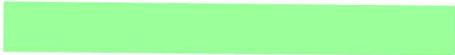
U.S. Citizenship
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DATE: **DEC 30 2013**

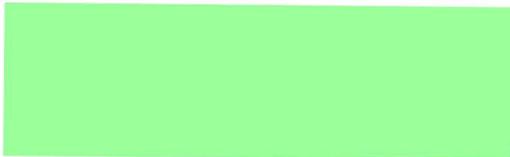
Office: ACCRA, GHANA

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IN RE: 

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Administrative Appeals Office (AAO) previously dismissed the applicant's appeal in a decision dated June 14, 2013. The matter is again before the AAO on motion. The motion will be dismissed.

The applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States under 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. She seeks a waiver of inadmissibility under section 212(h) of the Act.

The field office director concluded that the applicant was statutorily ineligible for a waiver of inadmissibility because she had been convicted of an aggravated felony after being admitted as a lawful permanent resident. Accordingly, in a decision dated August 30, 2012, the field office director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). In our decision on appeal, we affirmed the finding of the field office director and dismissed the appeal based on the applicant's ineligibility for a waiver of inadmissibility.

On motion, the applicant, through counsel, contends that her son is distraught over the absence of his mother. She also asserts that findings that she is an aggravated felon are improper because she was never charged as an aggravated felon during her removal proceedings. Additionally, the applicant claims that she was not afforded due process during her removal proceedings before an Immigration Judge and the Board of Immigration Appeals and was denied the opportunity to establish her eligibility for a waiver under former section 212(c) of the Act. She further alleges that her crimes involving moral turpitude were part of a single scheme and that an exception therefore applies. Finally, she argues that her convictions do not qualify as aggravated felonies because although she was initially sentenced to at least one year of imprisonment, she was later granted probation.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that the decision was based on an incorrect application of law or Service policy. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On motion, the applicant has submitted a brief. The entire record was reviewed and considered in rendering a decision on the motion.

The applicant asserts that she is eligible for a 212(c) waiver. Section 212(c) of the Act, 8 U.S.C. § 1182(c) is discretionary relief from inadmissibility that was repealed with the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA). The U.S. Supreme Court has held that "§ 212(c) relief remains available for aliens . . . whose convictions were obtained through plea agreements and who, notwithstanding those convictions, would have been eligible for § 212(c) relief at the time of their plea under the law then in effect." *INS v. St. Cyr*, 533 U.S. 289, 326 (2001). However, discretionary relief under former section 212(c) of the

Act is not the subject of the Form I-601, but is properly sought by filing Form I-191, Application for Advance Permission to Return to Unrelinquished Domicile, which is not within the subject matter jurisdiction of the AAO to adjudicate with this appeal. Similarly, although the applicant claims that her case was improperly handled by the Immigration Court and the Board, we lack jurisdiction over those decisions. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in her through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). Therefore, our decision is limited to the applicant's eligibility for a waiver under section 212(h) of the Act.

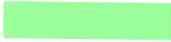
Although the applicant claims that she was never charged with removability as an aggravated felon during her removal proceedings, her eligibility for a waiver of inadmissibility is a separate matter. In proceedings before the AAO, the applicant bears the burden of demonstrating that she is eligible for the benefit she seeks. Section 291 of the Act, 8 U.S.C. § 1361. Section 212(h) of the Act provides that no waiver is available to an alien who has been admitted to the United States as a permanent resident and subsequently convicted of an aggravated felony.

The record reflects that the applicant was admitted as a lawful permanent resident on November 8, 1980. On October 19, 1990, she was convicted of two counts of theft over \$20,000, a second degree felony, and sentenced to five years in prison for each count. On that same date, she was also convicted of two counts of forged checks, a third degree felony. She was sentenced to five years imprisonment for one count and ten years of imprisonment for the other count. On February 14, 1991, imposition of her jail sentence was suspended for all charges and she was placed on probation.

The applicant claims that her convictions do not qualify as aggravated felonies because a sentence of imprisonment of one year or more was not imposed, as she was placed on probation. However, as noted in our decision on appeal, section 101(a)(48)(B) of the Act provides that "any reference to a term of imprisonment of a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law *regardless of any suspension of the imposition* or execution of that imprisonment or sentence in whole or in part." (Emphasis added.) Therefore, although imposition of her jail sentence was suspended and she was placed on probation, her sentences were for more than one year per section 101(a)(48)(B) of the Act.

On motion, the applicant has not stated any new facts or provided any new evidence which is relevant to her application for a waiver of inadmissibility under section 212(h) of the Act. Additionally, she has failed to demonstrate that our previous decision dismissing her appeal was in error. Therefore, her motion will be dismissed.

(b)(6)



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NON-PRECEDENT DECISION

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The motion is dismissed.

ORDER: The motion is dismissed.