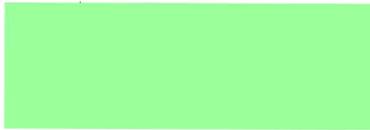




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 04 2013 OFFICE: HARTFORD

FILE: [Redacted]

IN RE: [Redacted]

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, appearing to be "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Hartford, Connecticut, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the application will be deemed unnecessary.

The applicant is a native and citizen of Dominican Republic 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 crimes 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 order to remain in the United States with her U.S. citizen spouse and children.

The Field Office Director concluded that the applicant is ineligible to apply for a 212(h) waiver because she entered the United States as a lawful permanent resident and the waiver cannot be applied after grant of a visa, admission, or adjustment of status. The Field Office Director denied the application accordingly. *See Decision of the Field Office Director*, dated August 9, 2012.

The record reflects that the applicant last entered the United States as a permanent resident on January 16, 1993. The applicant was subsequently convicted of attempted grand larceny on August 30, 1995 in the [REDACTED]. There is no indication that the applicant has since lost her lawful permanent resident status, either through abandonment, rescission, or an order of removal issued by an immigration judge. As the applicant is currently a lawful permanent resident, she is not statutorily eligible for adjustment of status so that further pursuit of the matter of hand is unnecessary. *Matter of Da Silva*, 10 I&N Dec. 191 (BIA 1963).¹

ORDER: The appeal is dismissed as the Form I-601 application for a waiver is unnecessary.

¹ It is noted that the applicant's conviction arises in the jurisdiction of the [REDACTED]. It is further that the Second Circuit's decision in *Tibke v. INS*, 335 F.2d 42 (2d Cir. 1964), allowing for adjustment of status to lawful permanent residents, refers to an applicant who has been placed into deportation proceedings.