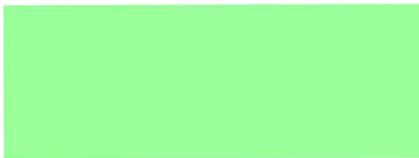


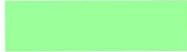


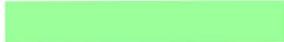
U.S. Citizenship
and Immigration
Services

(b)(6)



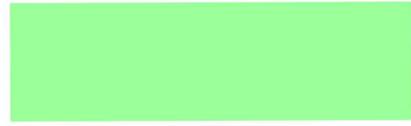
DATE: **MAY 17 2013** OFFICE: LOS ANGELES

FILE: 

IN RE: 

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras 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 in order to remain in the United States with his U.S. citizen parents and children.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative, and denied the application accordingly. *Decision of the Field Office Director*, dated October 26, 2010.

On appeal, counsel for the applicant asserts that the applicant has demonstrated that extreme hardship, specifically a loss of emotional and financial support, would befall his U.S. citizen parents and children if the applicant's waiver application is denied. In support of the waiver application and appeal, the applicant submitted identity documents, medical documents concerning his child, a letter from the applicant, a letter from his mother, and the applicant's criminal record. The entire record was reviewed and considered in rendering a decision on the 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.
 - (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), 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 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) (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 field office director found the applicant to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act for convictions for crimes involving moral turpitude. Specifically, the field office director states in the applicant's Form I-485 denial decision, dated October 26, 2010, that the applicant was convicted in the Superior Court of California, [REDACTED], for assault and criminal threats on November 21, 1996 and possession of burglary tool on July 17, 2009. The record only contains information concerning the applicant's possession of burglary tool conviction¹, but the applicant does not dispute the field office director's inadmissibility findings on appeal. Further, the applicant has not submitted evidence indicating that he was erroneously deemed inadmissible for his conviction of a crime involving moral turpitude.

The record indicates that the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on December 30, 2009. On October 26, 2010, the applicant's Form I-485 application was denied based upon the denial of his Form I-601 waiver application. The applicant was subsequently placed into immigration proceedings and ordered removed from the United States to Honduras on August 28, 2012. The applicant was removed from the United States on September 13, 2012.

The departure from the United States of an applicant who is under removal proceedings shall be deemed an abandonment of the adjustment application constituting grounds for termination of the proceeding by reason of departure. 8 C.F.R. § 245.2(a)(4)(ii). As this applicant no longer has an application upon which he can adjust his status in the United States, no purpose would be served in granting a waiver of inadmissibility.²

ORDER: The appeal is dismissed.

¹ Though not noted in the field office director's decision, the record also indicates that the applicant was convicted of unlawful carrying and possession of weapons on the same date.

² Further, the record indicates that the applicant was also convicted for possession of a controlled substance for sale pursuant to section 11378 of the California Health and Safety Code on January 26, 2012 in Los Angeles County, California. A section 212(h) waiver is generally not available for a section 212(a)(2)(A)(i)(II) controlled substances ground of inadmissibility. An alien who is inadmissible under section 212(a)(2)(A)(i)(II) of the Act based on a controlled substance offense may only qualify for a waiver of inadmissibility under section 212(h) of the Act if that offense relates to a single offense of simple possession of 30 grams or less of marijuana. No waiver is otherwise available for inadmissibility based upon section 212(a)(2)(A)(i)(II) of the Act. Based upon the applicant's conviction pursuant to section 11378 of the California Health and Safety Code, which penalizes possession of a controlled substance for sale rather than simple possession, the applicant is not eligible to apply for a section 212(h) waiver of inadmissibility.