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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

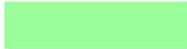


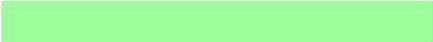
U.S. Citizenship  
and Immigration  
Services



Date: OCT 08 2013

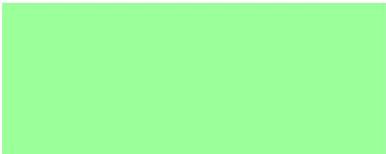
Office: MEXICO CITY

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h) and (a)(9)(B)(v), respectively, and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Michael Shumway".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The applications were denied by the Field Office Director, Mexico City, Mexico, is before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the Field Office Director for further action consistent with this decision.

The applicant is a native and citizen of Mexico 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 been convicted of a crime involving moral turpitude. The record shows that the applicant was also found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and again seeking readmission within 10 years of his last departure from the United States. The applicant was further found to be inadmissible pursuant to section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A) as a result of his removal from the United States. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) and an Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212). The applicant seeks a waiver of inadmissibility pursuant to sections 212(h) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(h) and (a)(9)(B)(v), respectively, and permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside in the United States with his U.S. lawful permanent resident mother and father.

In a decision dated May 22, 2013, the Field Office Director concurrently denied the Form I-601 and Form I-212 applications, finding that the Act does not provide a waiver for the applicant's inadmissibility under section 212(a)(9)(A)(i) of the Act where he was convicted of an aggravated felony.

On appeal, counsel states that the applicant was not convicted of an aggravated felony and should be afforded the opportunity to apply for a waiver of inadmissibility.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record has been reviewed and considered in rendering a decision on the appeal.

The Field Office Director found the applicant to be inadmissible under Section 212(a)(9) of the Act, which states in pertinent part:

(A) Certain aliens previously removed.-

(i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.-Any alien not described in clause (i) who-

- (I) has been ordered removed under section 240 or any other provision of law, or
- (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii)Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

The record reflects that on September 14, 2011 the applicant was ordered removed by the Immigration Judge. He was physically removed from the United States on September 24, 2011. The applicant is, therefore, inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act. The record does not reflect that the applicant was convicted of an aggravated felony; however, even if one of his criminal convictions could be classified as an aggravated felony, the statute would allow the applicant to apply for permission to reapply for admission after deportation or removal under section 212(a)(9)(A)(iii) of the Act.

The applicant was also found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. On July 21, 2011, the applicant was convicted of Criminal Coercion in violation of New Jersey Statutes section 2C:13-5A(1), for which he was sentenced to 336 days in jail, and Simple Assault in violation of New Jersey Statutes section 2C:12-1A(1), for which he was sentenced to six months in jail. The AAO will not make an initial determination in regards to whether either of these crimes qualifies as a crime involving moral turpitude under the Act as this was not at issue on appeal. However, concerning inadmissibility under section 212(a)(2)(A)(i)(I) of the Act, 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), (B), . . . of subsection (a)(2) . . . if –

...

(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 . . . .

....

No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for

permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

Assuming that applicant is inadmissible on the basis that his conviction are crimes involving moral turpitude, the applicant appears eligible to apply for a waiver under section 212(h) of the Act. The AAO notes that there are limitations on section 212(h) relief relating specifically to those who have previously been admitted as lawful permanent residents. The section 212(h) waiver provides that an individual who has previously been admitted to the United States as an alien lawfully admitted for permanent residence is ineligible for this waiver if, since the date of such admission, he or she has been convicted of an aggravated felony. Otherwise, an aggravated felony conviction does not preclude an alien from seeking a section 212(h) waiver. *See Matter of Michel*, 21 I&N Dec. 1101 (BIA 1998); *see also Matter of E.W. Rodriguez*, 25 I&N Dec. 784, 788 (BIA 2012).

The AAO therefore remands the matter to the Field Office Director for the issuance of new (separate) decisions on the applicant's Form I-601 and Form I-212 applications. The Field Office Director shall issue a decision on the Form I-601 application clarifying the applicant's inadmissibility, and if inadmissible under sections 212(a)(9)(B) and/or 212(a)(2)(A)(i) of the Act, determining whether the applicant has established the requirements for a waiver under sections 212(a)(9)(B)(v) and 212(h) of the Act, if applicable. Should the Field Office Director determine that the applicant is not inadmissible, or meets the statutory requirements for a waiver under sections 212(h) and 212(a)(9)(B)(v) of the Act, and also warrants a waiver of inadmissibility as a matter of discretion, the Field Office Director shall also issue a new decision on the applicant's Form I-212 application determining whether the applicant has met the requirements of section 212(a)(9)(A)(iii) of the Act. If the Field Office Director determines that the applicant does not meet the statutory requirements for a waiver under sections 212(h) and 212(a)(9)(B)(v) of the Act, or warrants a waiver of inadmissibility as a matter of discretion, the Field Office Director shall issue a new decision on the applicant's Form I-212 denying that application in the exercise of discretion. *See Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964). If the decisions are adverse to the applicant, the Field Office Director will certify them for review to the AAO.

**ORDER:** The matter is remanded to the Field Office Director for further action consistent with this decision.