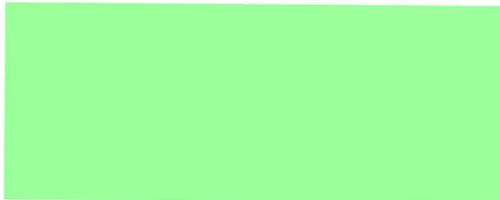




U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **AUG 27 2014** Office: NEBRASKA SERVICE CENTER 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 (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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for waiver of inadmissibility was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Pakistan and citizen of Canada, was admitted to the United States as a lawful permanent resident on May 14, 1979. As a result of numerous criminal convictions the applicant was placed in removal proceedings and ordered removed to Canada on October 22, 1990. On June 8, 1992, the BIA affirmed the immigration judge's decision to remove the applicant. The applicant departed the United States on August 11, 1997. After entering the United States as a Canadian citizen on December 16, 1997, the applicant was placed in removal proceedings and again ordered removed to Canada on October 16, 1998. On June 10, 2002, the BIA affirmed the immigration judge's decision to remove the applicant and on October 12, 2004 the Ninth Circuit denied his request for review. The applicant was removed from the United States for a second time on February 24, 2010. In applying for an immigrant visa based on an Alien Relative Petition filed by his spouse, the applicant was found to be inadmissible to the United States under section 212(a)(2)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(B), for having been convicted of two or more offenses for which the aggregate sentences to confinement were 5 years or more. In a decision, dated November 14, 2013, the director then found the applicant ineligible for a waiver under section 212(h) of the Act because one of his convictions was for an aggravated felony and he committed this crime subsequent to his admission to the United States as a lawful permanent resident. His application was denied accordingly. Nevertheless, the applicant is applying for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his U.S. citizen wife, mother and father.

In an appeal, dated December 13, 2013 and received by the AAO on March 25, 2014, counsel states that the aggravated felony bar to admission does not apply to the applicant and that the applicant is eligible for discretionary relief.

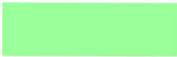
Section 212(a)(2)(A) of the Act states, in pertinent parts:

(A) Conviction of certain crimes.-

(i) In general.-Except as provided in clause (ii), any 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, or

(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.



(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

(B) Multiple criminal convictions.-Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

The record indicates that the applicant has four criminal convictions all occurring in Texas. On March 16, 1984, the applicant was convicted of theft, \$200 to \$700 and was sentenced to three days in jail. On January 22, 1987, the applicant was convicted of assault and was sentenced to one year probation. On March 31, 1989, the applicant was convicted of burglary of a habitation and was sentenced to eight years deferred adjudication and thirty days in jail. On February 21, 1990, the applicant was convicted of theft by receiving \$750 to \$20,000 and unauthorized use of a motor vehicle. The applicant was sentenced to eight years imprisonment for this conviction. The director found the applicant inadmissible under section 212(a)(2)(B) of the Act for having been convicted of two or more offenses for which the aggregate sentences to confinement were 5 years or more and counsel does not contest this finding of inadmissibility on appeal.<sup>1</sup>

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 –

....

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<sup>1</sup> The record indicates that the applicant is also inadmissible under section 212(a)(2)(A)(i)(I) of the Act for being convicted of crimes involving moral turpitude and that his burglary of a habitation offense would subject him to the heightened discretionary standard under 8 C.F.R. § 212.7(d).

(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 . . . and

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status. . . .

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 seven 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.

In addition to his inadmissibility under section 212(a)(2)(B) of the Act, the director also found the applicant's conviction for theft by receiving, \$750 to \$20,000, to be an aggravated felony under the definition given at section 101(a)(43)(G) of the Act, which states that an aggravated felony is a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment is at least one year. The applicant's theft offense had a term of imprisonment of eight years. Counsel does not contest this determination on appeal.

The aggravated felony bar to a section 212(h) waiver relates specifically to individuals admitted as lawful permanent residents. An alien who was not previously admitted to the United States for lawful permanent residence, has never been a lawful permanent resident, and has an aggravated felony conviction is not precluded from applying for a section 212(h) waiver in conjunction with an application for adjustment of status. *See Matter of Michel*, 21 I&N Dec. 1101, 1104 (BIA 1998). That is, an individual admitted as a nonimmigrant, who has *never* held lawful permanent resident status, and who has a conviction for a crime that would render him or her deportable as an aggravated felon, can apply for a section 212(h) waiver in conjunction with an application for adjustment of status.

Counsel asserts that the aggravated felony bar to admission does not apply to the applicant and that the applicant is eligible for discretionary relief. Counsel states that the statutory construction of section 212(h) indicates that the aggravated felony bar only applies to current lawful permanent residents who are in removal proceedings because this section of section 212(h) includes the seven year continuous residence bar, which only applies to current lawful permanent residents in removal proceedings. Counsel cites to Board of Immigration Appeals (BIA) case law and legislative history

to support her assertions. Counsel's assertions are unpersuasive and her interpretation of the statute is incorrect. The statute clearly indicates that no waiver is available to an applicant who has been admitted as a lawful permanent resident, *if either* the applicant has been convicted of an aggravated felony after being admitted *or* the applicant has not resided continuously in the United States for seven years before he or she is placed in removal proceedings. The common factor in this clause is having been admitted as a permanent resident, not having been placed in removal proceedings. The clause regarding having been in removal proceedings is tied to the seven year continuous residency clause, not the aggravated felony clause.

Furthermore, a reading of the BIA case law cited by counsel reveals that these cases do not support counsel's assertions. These cases all involved the means of admission for permanent residence and whether that affected an applicant being subject to the permanent bars. See *Matter of Koljenovic*, 25 I&N Dec. 219, 222 (BIA 2010) and *Matter of E.W. Rodriguez*, 25 I&N Dec. 784, 789 (BIA 2012). The means of the applicant's admission is not at issue in this case. Here the applicant was admitted as a lawful permanent resident on May 14, 1979 and was subsequently convicted, on February 21, 1990, of an aggravated felony. Because the applicant was a permanent resident at the time of his conviction he became subject to the permanent aggravated felony bar. There is no time limit or expiration of this bar. Thus, he is statutorily ineligible for a waiver under section 212(h) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. See Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.