

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



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

Date: FEB 05 2014

Office: SACRAMENTO, CA [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to sections 212(h) and 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i) and (i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

Handwritten signature of Ron Rosenberg in black ink.

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Sacramento, California. The Administrative Appeals Office (AAO) dismissed the appeal and a subsequent motion. The matter is now before the AAO on a second motion. The motion will be granted and the underlying application remains denied.

The applicant is a native and citizen of Morocco who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Act for having been convicted of crimes involving moral turpitude, and section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to sections 212(h) and (i) of the Act in order to reside with his wife in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. The AAO dismissed the appeal, also finding that the applicant failed to establish extreme hardship to a qualifying relative. The applicant filed a subsequent appeal, which the AAO considered as a motion, explaining the circumstances of his convictions. The AAO affirmed its previous decision, concluding that the applicant failed to establish extreme hardship to a qualifying relative. The applicant has now filed a second motion and submits new evidence in support of the motion.

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 that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the applicant has submitted a letter and new documentary evidence to support his waiver application. The applicant's submission meets the requirements of a motion to reopen. Accordingly, the motion is granted.

In addition to the evidence already described in the AAO's previous decisions, the record now also includes an updated letter from the applicant and copies of invoices. The entire record was reviewed and considered in rendering this decision.

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

(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.

Section 212(h) of the Act provides, in pertinent part:

(h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that --

(i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated.

(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 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, 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.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien

would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

In this case, the AAO previously found that the applicant is inadmissible under section 212(a)(2)(A)(i) of the Act for having been convicted of crimes involving moral turpitude, and section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. Specifically, the record shows that in 1988, the applicant was convicted in Morocco of writing bad checks, and that in 2002, the applicant was again convicted in Morocco of writing bad checks. The record further shows that the applicant failed to disclose his arrests and criminal convictions on his adjustment application.

On motion, the applicant submits invoices for construction work he purportedly completed in Morocco but for which he was not paid. He contends he is an innocent person.

As stated in our previous decision, the AAO cannot go beyond the record of conviction to re-examine the crimes for which the applicant was convicted in 1988 and 2002. The applicant does not contest that he was convicted; rather, he asserts his innocence. The AAO does not have the authority to overturn criminal convictions and the fact remains that the applicant was convicted of crimes on two separate occasions. His assertions of innocence and submitted documents do not change that.

The applicant is inadmissible under both section 212(a)(2)(A) and section 212(a)(6)(C)(i) of the Act. He must establish extreme hardship to his wife in order to be eligible for a waiver of these grounds. The applicant has not addressed extreme hardship in the instant motion. Therefore, the underlying waiver application remains denied.

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.

ORDER: The motion is granted but the underlying waiver application remains denied.