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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**

[Redacted]

Date: **MAR 06 2014**

Office: DETROIT, MI

FILE: [Redacted]

IN RE: Applicant: [Redacted]

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

ON BEHALF OF APPLICANT:

[Redacted]

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 Field Office Director, Detroit, Michigan, denied the waiver application and a subsequent motion. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jordan 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 a crime involving moral turpitude. The applicant is the son of a U.S. citizen and has two U.S. citizen children. The applicant seeks a waiver of inadmissibility pursuant section 212(h) of the Act in order to live with his wife, children, and family 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 field office director upheld this determination in denying the applicant's subsequent motion to reopen and reconsider.

On appeal, counsel contends, among other things, that the applicant's wife is a derivative of her husband's Form I-140 petition and that therefore, denying the applicant's waiver application would render her without status in the United States. According to counsel, the applicant's two U.S. citizen children would experience hardships above and beyond the typical hardships because they are five and twelve years old, and uprooting them from the United States would cause them extreme hardship, particularly considering country conditions in Jordan.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)

After a careful review of the entire record, the AAO finds that the applicant is ineligible for any relief. The record reflects that the applicant was ordered excluded and deported from the United States by an Immigration Judge on August 26, 1988, pursuant to section 212(a)(20) of the Act. The applicant concedes he unlawfully reentered the United States without inspection on February 17, 2001. *Brief in Support of Appeal to the AAO* at 3, dated November 20, 2013; *Form I-601*, dated July 27, 2010. The applicant was found to be present in the United States without a lawful admission or parole on February 21, 2014, and was issued a Notice of Intent/Decision to Reinstate Prior Order (Form I-871).

Section 241(a)(5) of the Act provides in pertinent part:

If the Attorney General [now the Secretary of Homeland Security (Secretary)] finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.

The regulation at 8 C.F.R. § 241.8 states that:

(a) [A]n alien who illegally reenters the United States after having been removed, or having departed voluntarily, while under an order of exclusion, deportation, or removal shall be removed from the United States by reinstating the prior order. The alien has no right to a hearing before an immigration judge in such circumstances. In establishing whether an alien is subject to this section, the immigration officer shall determine the following:

- (1) Whether the alien has been subject to a prior order of removal. . . .
- (2) The identity of the alien. . . .
- (3) Whether the alien unlawfully reentered the United States . . . .

(b) [I]f an officer determines that an alien is subject to removal under this section, he or she shall provide the alien with written notice of his or her determination. The officer shall advise the alien that he or she may make a written or oral statement contesting the determination. If the alien wishes to make such a statement, the officer shall allow the alien to do so and shall consider whether the alien's statement warrants reconsideration of the determination.

(c) Order. If the requirements of paragraph (a) of this section are met, the alien shall be removed under the previous order of exclusion, deportation, or removal in accordance with section 241(a)(5) of the Act.

The record reflects that on February 21, 2014, the applicant was issued a Form I-871 as required by 8 C.F.R. § 241.8(b). Consequently, the applicant's prior removal order was reinstated. The applicant is thus ineligible to file for any relief under the Act so no purpose would be served in adjudicating the appeal of the denial of the applicant's Form I-601.

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 appeal is dismissed.