

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: **MAR 20 2014**

Office: OAKLAND PARK, FL [REDACTED]

IN RE: [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,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Colombia 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. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(h) in order to reside with her husband and children in the United States.

The field office director found that the applicant's application for adjustment of status was approved and that the applicant was therefore no longer an applicant for adjustment of status. The field office director denied the waiver application accordingly.

On appeal, counsel contends that the field office director failed to consider the basis for filing a waiver application. Specifically, counsel asserts that in a separate decision dated March 18, 2010, the field office director denied the applicant's application for naturalization (Form N-400) after concluding, among other things, that the applicant is inadmissible pursuant to section 212(a)(2)(A)(i) of the Act for having been convicted of two crimes involving moral turpitude. In response to the denial of the Form N-400, on May 25, 2010, the applicant filed the instant waiver application. Counsel contends the applicant was denied the opportunity to apply for a waiver when she was eligible. In addition, relying on a recent decision by the Eleventh Circuit Court of Appeals, counsel contends the applicant's convictions are not crimes involving moral turpitude and requests that the applicant be found to be admissible to the United States.

It is uncontested that the applicant's application for adjustment of status was approved on March 30, 2007. The instructions to the Form I-601 list nine categories of individuals who may file the form. Permanent Resident Aliens are not listed as an eligible category. Because the applicant is now a lawful permanent resident, the applicant's waiver application is moot and no purpose would be served in adjudicating the appeal of the waiver denial. The AAO has no jurisdiction to review the denial of the Form N-400.

Regarding counsel's contentions on appeal, the record shows the applicant has filed a new Form N-400. To the extent the Eleventh Circuit Court of Appeals recently held that the statute under which the applicant was convicted, Florida Statutes § 812.014(1), is divisible and, therefore, may or may not be a crime involving moral turpitude depending on whether the record shows an intent to deprive versus only an intent to appropriate, *Ramos v. U.S. Att'y Gen.*, 709 F.3d 1066 (11th Cir. 2013), conviction documents in the record indicate that the applicant was found guilty of "theft/to deprive." See The Circuit/County Court, in and for [REDACTED] Court Status dated September 30, 1999. Therefore, the Court's decision in *Ramos* is not dispositive in this case.

The applicant's waiver application is moot and the appeal will be dismissed.

ORDER: The appeal is dismissed.