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



U.S. Citizenship  
and Immigration  
Services

Date: **MAY 05 2014**

Office: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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:  
[REDACTED]

INSTRUCTIONS:

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 Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nicaragua who was found by the director to be inadmissible under 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. On December 12, 1990, the applicant adjusted to lawful permanent resident status pursuant to Section 245A of the Act. On December 13, 1996, the applicant was convicted of Conspiracy to Obstruct Commerce Robbery in violation of 18 U.S.C. § 1951, and was sentenced to more than one year imprisonment. On January 26, 1999, an immigration judge ordered that the applicant be removed from the United States as an aggravated felon. On March 25, 1999, the applicant was removed from the United States.

The director determined that the applicant was seeking a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), but was statutorily ineligible for the waiver due to having been convicted of an aggravated felony after admission to the United States as a lawful permanent resident, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Director*, dated June 25, 2013.

On appeal counsel for the applicant asserts in the Notice of Appeal (Form I-290B) that the director erred in denying the waiver application by determining the applicant was ineligible to apply. Counsel indicated that a brief would follow to discuss whether the applicant's adjustment of status in the United States qualifies as a previous admission as an alien lawfully admitted for permanent residence and whether his crime is an aggravated felony. However no brief has been submitted to the record. The entire record was reviewed and considered in rendering a decision on the appeal.

The AAO will first address the finding of inadmissibility for having been convicted of a crime involving moral turpitude and the finding that the applicant was convicted of an aggravated felony.

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

(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.

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

The record reflects that on December 13, 1996, the applicant was convicted in the United States District Court for the Southern District of Florida of Conspiracy to Obstruct Commerce Robbery in violation of 18 U.S.C. § 1951. He was sentenced the applicant to serve a term of 46 months imprisonment and three years of supervised release.

At the time of the applicant's conviction, 18 U.S.C. § 1951 stated:

18 U.S. Code § 1951 - Interference with commerce by threats or violence

Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

Section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F), includes as an aggravated felony – a crime of violence (as defined in section 16 of title 18, but not including a purely political offense) for which the term of imprisonment at least one year.

As counsel has not submitted evidence to dispute that the applicant's offense is a crime involving moral turpitude and an aggravated felony under section 101(a)(43)(F) of the Act, and the record does not show the finding of inadmissibility to be erroneous, we will not disturb the finding of the director.

Section 212(h) of the Act provides in relevant 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 –

...

(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.

The Board held in *Matter of Rodriguez*, 25 I&N Dec. 784 (BIA 2012), that section 212(h) of the Act bars relief for any alien who has been convicted of an aggravated felony after acquiring lawful permanent resident status, without regard to the manner in which such status was acquired.<sup>1</sup> 25 I&N Dec. 784 at 789 (citing *Matter of Koljenovic*, 25 I&N Dec. 219 (BIA 2010)). In I-601 cases involving applicants residing overseas, such as the present case, the AAO applies as controlling decisions of the Board and the U.S. Supreme Court. Accordingly, in view of the decisions of the Board in *Matter of Koljenovic* and *Matter of Rodriguez*, the applicant in the instant case is statutorily ineligible for relief under section 212(h) of the Act, as he was convicted of an aggravated felony after acquiring lawful permanent resident status.

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.

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<sup>1</sup> The Board disagreed with the Fifth Circuit's interpretation of section 212(h) of the Act and held that in jurisdictions where controlling circuit law does not forbid them from doing so, they would continue to hold that section 212(h) relief is unavailable to any alien who has been convicted of an aggravated felony after acquiring lawful permanent resident status, regardless of the manner in which such status was acquired.