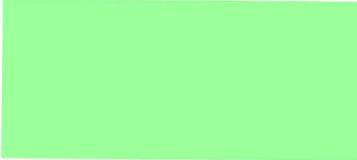




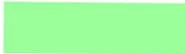
U.S. Citizenship
and Immigration
Services

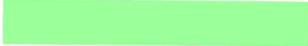
(b)(6)



Date: **NOV 07 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:

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application for a 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 is a native and citizen of Pakistan who was granted conditional residence under the Special Agricultural Worker program in November 1988. The applicant was granted lawful permanent resident status in 1990. In 1994, the applicant was convicted in the Supreme Court for ██████ County, State of New York, of grand larceny in the second degree, in violation of section 155.40 of the New York Penal Code, and offering a false instrument for filing in the first degree (20 counts), in violation of section 175.35 of the New York Penal Code. The applicant was sentenced to time served, probation and restitution. Consequently, on July 15, 1999, the applicant was ordered removed. A subsequent appeal was dismissed by the Board of Immigration Appeals (BIA) on February 24, 2003 and a motion to reopen was denied by the BIA on May 20, 2003. The applicant was removed in October 2003. The applicant seeks a waiver of inadmissibility pursuant to 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 spouse and children.

The director determined that the applicant was 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 crimes involving moral turpitude. The director further noted that the applicant 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, as noted by the BIA in its May 20, 2003 decision denying the applicant's motion to reopen. The field office director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Director*, dated March 4, 2014.

On appeal, the applicant's U.S. citizen spouse maintains that the director failed to understand the hardships she and the children would endure were the applicant unable to reside in the United States. The applicant's spouse further contends that her husband pled guilty in 1994 because he was assured that he would not be deported. Finally, the applicant's spouse maintains that her husband has rehabilitated himself.

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.

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. (emphasis added)

On appeal, the applicant does not dispute that he is inadmissible for having been convicted of crimes involving moral turpitude. The applicant also does not dispute that he was convicted of an aggravated felony after admission to the United States as a lawful permanent resident.

The record establishes that the applicant was convicted of an aggravated felony under section 101(a)(43)(M)(i) of the Act and this conviction occurred after the applicant's admission to the United States as a lawful permanent resident. Consequently, the applicant is permanently barred from obtaining a waiver under section 212(h) of the Act. As the applicant is statutorily ineligible for a waiver, no purpose would be served in discussing whether the applicant has established extreme hardship to a qualifying relative or whether he has established that he has been rehabilitated.

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.