



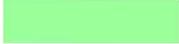
U.S. Citizenship
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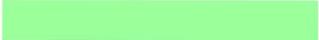
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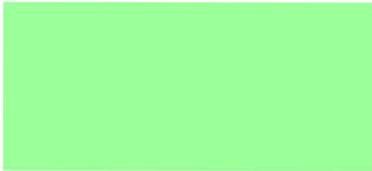
Office: NEBRASKA SERVICE CENTER

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:



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, a native and citizen of Argentina, was admitted to the United States as a lawful permanent resident on August 3, 1995. As a result of a criminal conviction for an aggravated felony, the applicant was placed in removal proceedings and ordered removed on November 8, 2011. The applicant departed the United States on December 14, 2011. In applying for an immigrant visa based on an Alien Relative Petition filed by his spouse, the applicant was found to be inadmissible to the United States 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. In a decision, dated December 6, 2013, the director then found the applicant ineligible for a waiver under section 212(h) of the Act because he had been convicted of an aggravated felony and he committed this crime subsequent to his admission to the United States as a lawful permanent resident. His application was denied accordingly. The applicant is applying for a waiver under 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.

On appeal, counsel states that the applicant is not subject to the statutory bar under section 212(h) of the Act because his removal proceedings originated in the jurisdiction of the 11th Circuit Court of Appeals and under *Lanier v. US Attorney General*, 631 F.3d 1363 (11th Cir. 2011) the applicant should be eligible to apply for a waiver under section 212(h) of the Act. Counsel states that the applicant was a minor when he was admitted to the United States as a lawful permanent resident and should not be subjected to more restrictions than an adult who adjusts to a lawful permanent resident after entry into the United States. Finally, counsel indicates that the applicant has outstanding equities that establish he is eligible for discretionary relief.

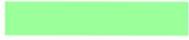
Section 212(a)(2)(A) of the Act states, in pertinent parts:

(A) Conviction of certain crimes.-

(i) In general.-Except as provided in clause (ii), any 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, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.



(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The record indicates that on [REDACTED] 2010, the applicant was convicted of Conspiracy to Commit Wire Fraud under 18 U.S.C. § 371. The applicant was sentenced to 18 months in prison. The director found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. Counsel does not contest this finding of inadmissibility on appeal.

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

In addition to his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act, the director found the applicant's conviction for Conspiracy to Commit Wire Fraud to be an aggravated felony under the definition given at section 101(a)(43)(M) of the Act, which states that an aggravated felony is an offense that involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000. The applicant's fraud offense involved losses in the amount of \$198,000. Counsel does not contest this determination on appeal.

The aggravated felony bar to a section 212(h) waiver relates specifically to individuals admitted as lawful permanent residents. An applicant who was not previously admitted to the United States for lawful permanent residence, has never been a lawful permanent resident, and has an aggravated felony conviction is not precluded from applying for a section 212(h) waiver in conjunction with an application for adjustment of status. *See Matter of Michel*, 21 I&N Dec. 1101, 1104 (BIA 1998). Moreover, as counsel states, in *Lanier v. US Attorney General*, 631 F.3d 1363 (11th Cir. 2011) the court allowed for section 212(h) waiver relief in the case of an applicant who had been convicted of an aggravated felony. However, in *Lanier*, the court distinguished between aliens such as Lanier, who had adjusted to the status of lawful permanent resident after being admitted to the United States in a different status and those who had been inspected and admitted as a lawful permanent resident at a port of entry. In the applicant's case, he was clearly inspected and admitted as a lawful permanent resident at a port of entry on [REDACTED], 1995. The decision in *Lanier* would not be applicable to the applicant even if he were residing in the 11th Circuit's jurisdiction, which he currently is not. We also acknowledge counsel's assertion that the applicant was a minor when he entered the United States and should not be disadvantaged because of his manner of entry given that the applicant did not have authority, as a 13 year old child, as to the manner of his entry into the United States. There is no exception to the aggravated felony bar to a section 212(h) waiver for individuals admitted as lawful permanent residents when they were minors. As an individual admitted as a lawful permanent resident, the aggravated felony bar to a section 212(h) waiver is applicable.

Here the applicant was admitted as a lawful permanent resident on [REDACTED] 1995. Because the applicant was subsequently convicted, on [REDACTED] 2010, of an aggravated felony, he is statutorily ineligible for a waiver under section 212(h) of the Act. Given that the applicant is statutorily ineligible for a waiver, his outstanding equities or any extreme hardship his qualifying relatives may be facing as a result of his inadmissibility, are not of consequence to this application.

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.