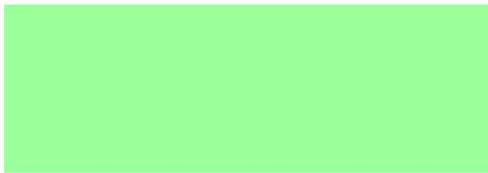


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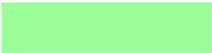


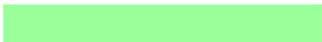
U.S. Citizenship
and Immigration
Services



Date: JAN 09 2015

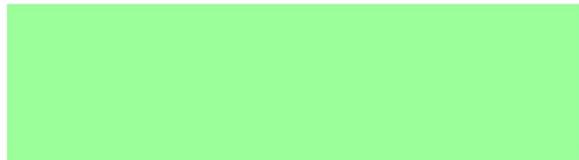
Office: NEBRASKA SERVICE CENTER

FILE: 

IN RE: Applicant: 

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:

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the waiver application. 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 Nigeria who was found 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 crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility under section 212(h) of the Act in order to return to the United States to reside with his U.S. citizen wife 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. The director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel contends that the applicant is not statutorily ineligible for a waiver because although he was convicted of the above-referenced crimes, he never served any time in confinement. Counsel further asserts that the applicant has established extreme hardship to a qualifying relative. The entire record was reviewed and considered in rendering a decision on the appeal.

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 May 26, 2000, the applicant was admitted to the United States as a lawful permanent resident. On May [REDACTED] the applicant was convicted of Theft by Shoplifting in violation of the *Official Code of Georgia Annotated* (O.C.G.A.), § 16-8-14 (2002) in the State Court of [REDACTED] County, State of Georgia. The applicant was sentenced to twelve months confinement. On April [REDACTED] the applicant was convicted of Theft by Taking in violation of O.C.G.A. § 16-8-2 (2002) in the Superior Court of [REDACTED] County, State of Georgia. The applicant was sentenced to three years confinement. On August 16, 2010, an immigration judge ordered that the applicant be removed from the United States. On November 29, 2010, the applicant was removed from the United States.

On appeal, the applicant does not dispute that he is inadmissible for having been convicted of crimes involving moral turpitude. However, counsel's brief refers to section 212(a)(2)(B) of the Act, and he contests the applicant's inadmissibility under that statute stating that while the applicant had been convicted of two crimes involving moral turpitude, his aggregate sentences did not amount to five years or more.

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

(B) Multiple criminal convictions.-Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

The applicant has not been found inadmissible under section 212(a)(2)(B) of the Act, so any statements regarding whether his sentences amounted to an aggregate of five years are not relevant. The applicant is statutorily ineligible for a waiver as an alien convicted of an aggravated felony under section 101(a)(43)(G) of the Act, as a result of his theft convictions.

Section 101(a) of the Act states in pertinent part:

(4) The term "aggravated felony" means—

...

- (G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment at least one year;

The applicant was convicted of theft and sentenced to more than one year of imprisonment. His convictions for theft constitute an aggravated felony pursuant to section 101(a)(43)(G) of the Act.

Counsel asserts that the applicant was not sentenced to a term of imprisonment because his confinement was probated. The record of conviction reflects that in [REDACTED] the applicant pled guilty to Theft by Shoplifting, and was sentenced to a term of twelve months in the [REDACTED] County jail. In addition, for the applicant's [REDACTED] conviction for Theft by Taking, the record establishes that the applicant was sentenced to confinement for a period of three years.

While the record of conviction reflects that the Theft by Shoplifting sentence was probated and the Theft by Taking sentence was served on probation, the term of imprisonment includes “the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.” *Section 101(a)(48)(B) of the Act.*

The record establishes that the applicant was convicted of an aggravated felony under section 101(a)(43)(G) of the Act, for a theft offense for which the term of imprisonment was at least one year, and these convictions 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 and no purpose would be served in examining hardship to his wife and children.

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.