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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: HOUSTON, TEXAS

Date:

OCT 28 2008

IN RE: Applicant



APPLICATION: Application for Permission to Reapply for Admission into the United States after
Deportation or Removal under Section 212(a)(9)(A) of the Immigration and
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Field Office Director, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who entered the United States on April 8, 1989, on an IR-1 immigrant visa. On October 1, 1992, the applicant was convicted of murder and sentenced to ten (10) years probation. On May 13, 1993, an Order to Show Cause (OSC) was issued against the applicant. On May 18, 1993, an immigration judge ordered the applicant deported from the United States, and a Warrant of Deportation (Form I-205) was issued against the applicant. On May 19, 1993, the applicant was deported from the United States. On November 18, 2002, the applicant's probation was discharged. The applicant is inadmissible to the United States under section 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii)(I), and 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I). He now seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside with his United States citizen wife and child.

The Field Office Director determined that the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for being convicted of a crime involving moral turpitude. *Field Office Director's Decision*, dated July 19, 2007. The Field Office Director found that since the applicant required a section 212(h) waiver of his ground of inadmissibility, he must file an Application for Waiver of Grounds of Excludability (Form I-601) simultaneously with his Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212), and she denied the Form I-212 accordingly. *Id.*

Section 212(a)(2) of the Act provides, in pertinent part, that:

(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...

is inadmissible.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien previously removed.-

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.

(ii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the [Secretary] has consented to the aliens' reapplying for admission.

Section 212(h) of the Act provides, in pertinent part, that:

Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I)...of subsection (a)(2) if—

(1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that—

(i)...the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii)the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii)the alien has been rehabilitated; or

(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 established to the satisfaction of the [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...

(2) the [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 provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture.

On appeal, the applicant, through counsel, claims that the applicant was convicted of murder; however, he "was placed on probation and was never incarcerated for this offense. This decision by the Galveston Court was based on the facts and circumstances surrounding the events that resulted in [the applicant's] conviction including the fact that the victim had initiated the assault that resulted in his death and also the fact that the victim had a very lengthy criminal record. [The applicant] was placed on probation and that probation was eventually discharged." *Form I-290B*, filed August 20, 2007. The AAO notes that even though the applicant was placed on probation, he was still convicted of murder, which is not only a crime involving moral turpitude but an aggravated felony. *See* section 101(a)(43)(A) of the Act. The AAO finds that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for being convicted of a crime involving moral turpitude. Since the applicant was convicted of murder, there is no waiver of the applicant's ground of inadmissibility. The applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, and; therefore, he is statutorily ineligible for a waiver of inadmissibility.

Section 212(h)(2) of the Act, 8 U.S.C. 1182(h)(2), states, in pertinent part, that:

No waiver shall be provided under this subsection in the case of an alien who has been convicted of ... murder.... 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....

The AAO notes that under section 101(a)(43)(A) of the Act, murder is an aggravated felony. Since the applicant was convicted of an aggravated felony after he was lawfully admitted for permanent residence to the United States, he is ineligible for a waiver under section 212(h) of the Act. Additionally, the applicant is statutorily ineligible for relief under section 212(h) based on his murder conviction.

Matter of Martinez-Torres, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

The applicant is subject to the provisions of section 212(h) of the Act. No waiver is available to an alien who has been convicted of murder or who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if since the date of such admission the alien has been convicted of an aggravated felony; therefore, no purpose would be served in the favorable exercise of discretion in

adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. As the applicant is statutorily inadmissible to the United States, the Form I-212 was properly denied by the Field Office Director.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.