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

U.S. Citizenship and Immigration Services

(b)(6)

Date: NOV 2 2 2013

Office: NEBRASKA SERVICE CENTER

IN RE:

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:

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 Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Director, Nebraska Service Center. 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 Albania who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Act for having been convicted of a crime involving moral turpitude. In March 2008, the applicant departed the United States pursuant to a removal order. The applicant is married to a U.S. citizen and seeks permission to reenter the United States in order to live with his wife in the United States.

The director found that the applicant's waiver of inadmissibility was denied and that the applicant would remain inadmissible to the United States even if the Form I-212 was granted. The director denied the application as a matter of discretion accordingly.

On appeal, counsel contends that the decision denying the waiver application has been appealed and, therefore, the decision denying the Form I-212 is premature. Counsel contends the denial of the Form I-212 should be reversed in the event the waiver application is sustained.

In a separate decision, the AAO has dismissed the applicant's appeal of his waiver application.

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 that no purpose would be served in granting the application. In this case, the applicant is subject to the provisions of section 212(a)(2)(A)(i) of the Act and was denied a waiver under section 212(h) of the Act. The AAO has dismissed the applicant's appeal of that decision. Therefore, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States as the applicant remains otherwise inadmissible.

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.