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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

H5

FILE:

Office: CHICAGO, IL

Date:

DEC 30 2010

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois who also denied the applicant's subsequent Motion to Reconsider. The Field Office Director's denial of the motion 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 was found to be inadmissible to the United States pursuant to 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 committed crimes involving moral turpitude. The applicant is married to a U.S. citizen. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States.

In his denial of the applicant's waiver application, the Field Office Director concluded that the applicant had failed to establish that the bar to his admission would result in extreme hardship for a qualifying relative. *Decision of the Field Office Director*, dated September 19, 2008. He subsequently denied the applicant's motion to reconsider, filed on October 15, 2008, finding it failed to satisfy the requirements set forth in the regulation at 8 C.F.R. § 103.5(a)(3). *Decision of the Field Office Director*, dated May 5, 2009.

On appeal, counsel states that the Field Office Director's May 5, 2009 decision was based on factual errors and that improper weight was given to the applicant's criminal history, while positive factors and extreme hardship were ignored. *Form I-290B, Notice of Appeal or Motion*, dated June 5, 2009.

In support of the waiver, the record contains counsel's briefs, statements from the applicant and his spouse; country conditions materials on Mexico; employment letters for the applicant and his spouse; the applicant's and his spouse's resumé's; a psychological evaluation of the applicant's spouse; financial documentation, including proof of the applicant's and his spouse's bills and loans; and court documents relating to the applicant's convictions for domestic battery.

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

- (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.

The record reflects that in 2000 and 2001, the applicant was convicted of domestic battery under 720 Illinois Compiled Statutes (ILCS) §§ 5/12-3.2 and 5/12-3.2(a)(1). Simple assault and battery offenses generally do not involve moral turpitude. However, that determination can be altered if there is an aggravating factor, such as the infliction of bodily harm upon persons whom society views as deserving of special protection, such as children or domestic partners or intentional serious bodily injury to the victim. *In re Sanudo*, 23 I&N Dec. 968, 972 (BIA 2006). In the present case, the applicant was convicted in 2001 of domestic battery under 720 ILCS § 5/12-3.2(a)(1), which at that time stated:

- (a) A person commits domestic battery if he intentionally or knowingly without legal justification by any means:
- (1) Causes bodily harm to any family or household member as defined in subsection (3) of Section 112A-3 of the Code of Criminal Procedure of 1963, as amended

In that the applicant has been convicted of domestic battery under 720 ILCS § 5/12-3.2(a)(1), which requires the intentional causing of bodily harm to a family or household member, the AAO concludes that his conviction is a conviction for a crime involving moral turpitude. *Cf. In re Sanudo* (stating that “assault and battery offenses that necessarily involved the intentional infliction of serious bodily injury on another have been held to involve moral turpitude,” and holding that a battery conviction that involves only a minimal, nonviolent touching does not inhere moral turpitude even when inflicted upon a spouse); *Matter of Tran*, 21 I&N Dec. 291 (BIA 1996) (holding that a conviction for willful infliction of corporal injury on the parent of one’s child under section 273.5(a) of the California Penal Code is a conviction for a crime involving moral turpitude); *Grageda v. U.S. INS*, 12 F.3d 919 (9th Cir. 1993) (same). The applicant’s 2001 conviction is a Class 4 felony under Illinois law as he was previously convicted of domestic battery in 2000. The maximum sentence of imprisonment for a Class 4 felony was three years at the time of the applicant’s conviction.

The applicant’s inadmissibility under the Act is not, however, limited to his criminal conviction. The AAO also finds the record to establish that the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for having entered the United States through fraud or the willful misrepresentation of a material fact.¹

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record contains a copy of the applicant’s resumé, which indicates that he was employed in Chicago by The Drake Hotel from January 1994 until December 1998, and by [REDACTED] from January 1998 until December 2004. It also contains a copy of the applicant’s passport showing that his admissions to the United States during this period were made on the multiple-entry nonimmigrant visa issued to him on October 19, 1992. Based on this documentation, the AAO finds that, on at least four occasions (August 22, 1996, November 15, 1998, July 14, 2000 and September

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the original decision does not identify all of the grounds for denial. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3^d Cir. 2004)(noting that the AAO conducts appellate review on a *de novo* basis).

20, 2000), the applicant presented himself at a U.S. port-of-entry as a nonimmigrant visitor for business/pleasure when he was actually returning to his unlawful residence and employment in Chicago. Accordingly, the AAO finds that in using a nonimmigrant visa to enter the United States to live and work, the applicant obtained an immigration benefit through fraud or the willful misrepresentation of a material fact and is inadmissible under section 212(a)(6)(C)(i) of the Act.²

The AAO notes that a section 212(h) waiver of inadmissibility under section 212(a)(2)(i)(I) of the Act and a section 212(i) waiver of inadmissibility under section 212(a)(6)(C)(i) both require an applicant to establish that the bar to his or her admission would result in extreme hardship for a qualifying relative. In the present matter, however, the AAO will not explore whether the record establishes that the applicant's inadmissibility would result in extreme hardship for his spouse. We find that no purpose would be served by such an undertaking as the record demonstrates that the applicant is also inadmissible under section 212(a)(6)(C)(ii) of the Act for which no waiver is available.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the field office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Section 212(a)(6)(C) of the Act states:

(ii) Falsely claiming citizenship

(I) In general

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this chapter . . . or any other Federal or State law is inadmissible.

(II) Exception

In the case of an alien making a representation described in subclause (I), if each . . . parent of the alien . . . is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

² The AAO notes that the applicant may also be inadmissible under sections 212(a)(9)(B)(i)(I) or (II) of the Act based on his unlawful residence in the United States after April 1, 1997, the effective date of the unlawful presence provisions under the Act. The record, however, does not contain sufficient documentation for the AAO to reach this conclusion.

The record reflects that at the time of his March 5, 2008 adjustment interview, the applicant indicated that he had previously registered to vote in Illinois, although he had never voted in an election. He subsequently submitted a March 5, 2008 statement from [REDACTED], Executive Director, Chicago Board of Election Commissioners and a copy of the Illinois Voter Registration Application he had filed on November 16, 2001. The application includes the following "Voter Affidavit" to which each individual registrant attested by signing the application:

- I swear or affirm that I am a citizen of the United States.
- I will be at least 18 years old on or before the next election.
- I will have lived in the State of Illinois and in my election precinct 30 days as of the date of the next election.
- All of the information contained on this application is true. I understand that if it is not true, I can be convicted of perjury and fined up to \$5,000 and/or jailed for 2-5 years.

The above language reflected the requirements set forth in 10 ILCS § 5/3-1, which in 1991 stated:

Every person having resided in this State and in the election district 30 days next preceding any election therein, or who has resided in and is registered to vote from the election district 30 days next preceding any election therein and has moved to another election district in this State within said 30 days and has made and subscribed to the affidavit provided in paragraph (b) of Section 17-10 of this Act, and *who is a citizen of the United States* [emphasis added], of the age of 18 or more years is entitled to vote at such election for all offices and on all propositions

[REDACTED] statement indicates that at the applicant's request, his 2001 voter registration was removed from the files of the Board of Election Commissioners on March 5, 2008. Mr. Gough states that the applicant made the request as he is not a U.S. citizen.

While the AAO acknowledges the applicant's action to correct his prior misrepresentation, it does not change the fact that in signing and filing an Illinois Voter Registration Application on November 16, 2001, he claimed to be a U.S. citizen in order to be registered as a voter in Illinois.³ In that the record fails to demonstrate that the applicant qualifies for the exception provided by section 212(a)(6)(C)(ii)(II) of the Act, the AAO finds he is inadmissible to the United States for having falsely represented himself as a U.S. citizen to obtain a benefit under Illinois law.

No waiver is available to an individual barred from admission under section 212(a)(6)(C)(ii) of the Act. Therefore, the AAO finds no purpose would be served in considering whether the applicant is eligible for a waiver of the bars to his admission under sections 212(a)(2)(i)(I) and 212(a)(6)(C)(i) of the Act. The appeal will be dismissed accordingly.

³ A Loan Request/Credit Agreement in the record reflects that the applicant also identified himself as a U.S. citizen in securing an educational loan from JPMorgan Chase Bank on November 19, 2007.



ORDER: The appeal is dismissed.