

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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**



H5

Date:

JUL 25 2012

Office: LOS ANGELES

FILE:



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.

Thank you,

for Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the field office director for further action consistent with this decision.

The applicant is a native and citizen of Guatemala who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure an immigration benefit by fraud or willful misrepresentation. The applicant is married to a U.S. citizen, has four U.S. citizen children, and a lawful permanent resident father. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her family.

The record indicates that the applicant filed an Application to Adjust Status (Form I-485) and an Application for Waiver of Ground of Inadmissibility (Form I-601) on May 23, 2005. On August 31, 2006, the applicant's Form I-601 was denied. On November 22, 2006, after the applicant failed to file an appeal of the Form I-601, the applicant's Form I-485 was denied. On February 19 2008, counsel submitted a motion to reopen the Form I-485 decision stating that she and the applicant had never received the Form I-601 decision and thus did not have an opportunity to file an appeal. On April 23, 2009, the field office director reopened the applicant's Form I-485 stating that the field office was in error in denying the application. On June 16, 2009, counsel filed a Notice of Appeal to the AAO (Form I-290B) appealing the field office director's Form I-601 decision. The AAO notes that the record fails to show that counsel or the applicant received a copy of the Form I-601 decision.

The record indicates that the applicant was convicted on December 4, 1995 of Welfare Fraud under California Penal Code §10980(C)(2) for events that occurred on or about August 1, 1991. She was sentenced to five years of probation. The field office director found that based on this conviction the applicant was inadmissible under section 212(a)(6)(C) of the Act. The AAO notes that this conviction would not make the applicant inadmissible under section 212(a)(6)(C) of the Act because her misrepresentations were not made in an effort to gain a benefit under the Act. Welfare benefits are not benefits provided for under the Act.

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.

Although the applicant's conviction does not make her inadmissible under section 212(a)(6)(C) of the Act, it does make her inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude, which the applicant does not contest on appeal. In addition, this conviction would not qualify for the petty offense exception as the applicant was convicted of a felony. California Penal Code §10980(C)(2) is a "wobbler" offense, meaning a person can be charged with welfare fraud as either a misdemeanor or a felony depending on the

circumstances of the case and the defendant's criminal history. In the applicant's case this offense was charged as a felony. Felony "wobblers" are punishable by up to three years in prison.

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.

(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 was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the 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).

However, as the events that led to this conviction occurred in 1991, more than 15 years ago, the applicant may demonstrate eligibility for a waiver of inadmissibility under section 212(h)(1)(A) of the Act. An application for admission is a "continuing" application, and admissibility is adjudicated on the basis of the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992).

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

The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [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 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.

Because the record indicates that the field office failed to send the Form I-601 decision to the applicant or her attorney, we remand the matter to the field office director for issuance of a new I-601 decision. The field office director shall afford the applicant the opportunity to submit additional or more current evidence of hardship. If the new decision is adverse to the applicant, the decision shall be certified to the AAO for review as explained in 8 C.F.R. § 103.4.

ORDER: The field office director's previous decision is withdrawn. The matter is remanded to the field office director for further action consistent with this decision.