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

PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

H5

DATE: MAR 30 2012 OFFICE: CIUDAD JUAREZ, MEXICO FILE: [redacted]

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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,

Ellen C. Goleman

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer in Charge, Ciudad Juarez, Mexico 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 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 been convicted of a crime involving moral turpitude and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having sought a benefit under the Act through fraud or willful misrepresentation. The applicant is married to a U.S. citizen and is the father of three U.S. citizens. He seeks waivers of inadmissibility pursuant to sections 212(h) and (i) of the Act, 8 U.S.C. § 1182(h) and (i), in order to reside in the United States.

The Acting Officer in Charge concluded that the applicant had failed to establish that the bar to his admission would result in extreme hardship for a qualifying relative or that he merited a favorable exercise of discretion. She denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the District Director*, dated September 12, 1995. [1]

On appeal, counsel contends that the applicant has established extreme hardship to a qualifying relative. *Form I-290B, Notice of Appeal to the Administrative Appeals Unit,* dated October 11, 1995; *see also Counsel's Brief*, dated October 10, 1995. He submits additional proof of hardship.

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.

Section 212(a)(6)(C) of the Act provides 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 AAO acknowledges the assertions made by counsel on appeal, as well as the submitted evidence. However, we find that no purpose would be served by our consideration of the applicant's Form I-601 as he is statutorily ineligible for a waiver of his section 212(a)(2)(A)(i)(I) inadmissibility.

Pursuant to section 212(h)(2) of the Act:

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[1] Based on her denial of the Form I-601, the Acting Officer in Charge also denied the applicant's Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal. .

. . . .

> [N]o 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 . . . since the date of such admission the alien has been convicted of an aggravated felony . . . . No court shall have jurisdiction to review a decision of the Attorney General [now Secretary of Homeland Security] under this subsection.

In the present case, the record demonstrates that the applicant entered the United States on November 18, 1976 as a K-1 nonimmigrant, adjusting to lawful permanent resident status on March 17, 1977.[2] On July 22, 1981, the applicant pled guilty to the charge of rape, an aggravated felony pursuant to section 101(a)(43)(A) of the Act. In that the applicant was convicted of an aggravated felony following his 1977 adjustment, he is ineligible for relief under section 212(h) of the Act. Accordingly, the AAO will not consider his Form I-601.

Moreover, we find the record to indicate that, as of this date, the applicant is residing and working in the United States. Therefore, we also conclude that he has abandoned the immigrant visa and waiver applications he submitted in 1994.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(h) or (i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. As the applicant in the present matter has not met this burden, the appeal will be dismissed.

ORDER: The appeal is dismissed.

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[2] We note that the applicant was also granted lawful permanent residence a second time, entering the United States as a lawful permanent resident on August 24, 1989 after being issued an immigrant visa by the U.S. consulate in Ciudad Juarez.