

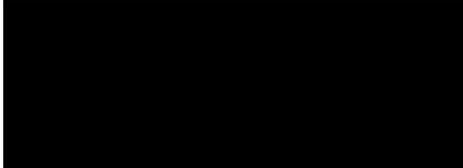
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Avenue, N.W., MS 2090  
Washington, DC 20529-2090



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



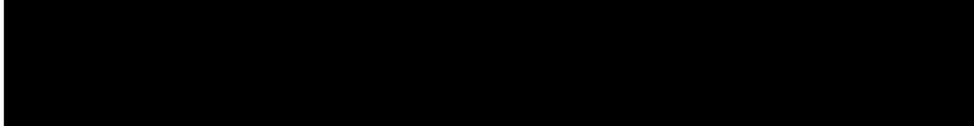
H2

DATE: **JUL 26 2012** OFFICE: GUATEMALA CITY FILE 

IN RE: 

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

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, Guatemala City, Guatemala. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not inadmissible and the waiver application is unnecessary.

The applicant is a native and citizen of Guatemala who entered the United States as a lawful permanent resident on May 24, 1993. The applicant subsequently departed the United States in July 2002 and has resided in Guatemala since that date, effectively abandoning his lawful permanent resident status in the United States. The applicant 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. The applicant seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with his wife and children in the United States.

The Field Office Director found that the applicant failed to establish extreme hardship to a qualifying relative and does not merit a finding of discretion, and denied the Form I-601 application for a waiver accordingly. *Decision of the Field Office Director*, dated December 9, 2009.

Section 212(a)(2)(A) of the Act renders inadmissible “any alien convicted of . . . a crime involving moral turpitude.” 8 U.S.C. § 1182(a)(2)(A)(i)(I). The record reflects that the applicant was indicted on April 10, 2002, in Hays County, Texas, for the crime of aggravated assault. During the pendency of his criminal case, the applicant departed from the United States and failed to appear before the court. On November 6, 2002, in Hays County, Texas, the applicant was indicted for bail jumping/failure to appear.

The applicant has not returned to the United States since his 2002 departure to resolve his pending criminal charges. As such, the record does not reflect that the applicant has any criminal convictions on his record. An applicant who is under indictment for a crime has not been convicted of that crime.<sup>1</sup>

Accordingly, the AAO concludes that the applicant has not been convicted of crimes involving moral turpitude that would render him inadmissible section 212(a)(2)(A)(i)(I) of the Act. Therefore, the Field Office Director’s decision will be withdrawn.

**ORDER:** As the applicant is not inadmissible, the waiver application is deemed unnecessary. The appeal is dismissed and the matter is returned to the Field Office Director for further proceedings.

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<sup>1</sup> 9 FAM 40.21(a) N3.3. We note that the applicant acknowledges that he departed from the United States due to his fear and uncertainty concerning his unresolved criminal charges. It is further noted that the AAO’s decision concerning the applicant’s admissibility to the United States pursuant to his Form I-601 application is separate from the Department of State’s discretionary decision concerning the applicant’s immigrant visa application.