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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: JUN 0 3 2013 OFFICE: SANTO DOMINGO FILE: [redacted]

IN RE: [redacted]

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:

SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santo Domingo, Dominican Republic. The matter is now before the Administrative Appeals Office (AAO) on appeal. The Field Office Director's decision will be withdrawn and the matter remanded to the Field Officer Director for further consideration consistent with this decision.

The applicant is a native and citizen of the Dominican Republic 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. 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 U.S. citizen father and lawful permanent resident mother in the United States.

The Field Office Director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601 application for a waiver accordingly. *Decision of the Field Office Director,* dated September 18, 2012.

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.

The record reflects that on August 29, 1994, the applicant was arrested for statutory rape. The record also reflects that the applicant was not convicted of this crime due to the statute of limitations.

It is noted that inadmissibility under section 212(a)(2)(A)(i)(I) of the Act may be based on an admission to having engaged in acts that constitute the essential elements of a crime involving moral turpitude.

The Board of Immigration Appeals (BIA) has established rules of procedure for determining whether an individual who has not been convicted of a crime, is, nevertheless, inadmissible for having admitted to acts that constitute the essential elements of that crime. *See Matter of P--*, I&N Dec. 33 (BIA 1941); *Matter of J--*, 2 I&N Dec. 285 (BIA 1945); *Memorandum of Solicitor General*, dated May 29, 1945; *Matter of K--*, 7 I&N Dec. 594 (BIA 1957). To have an admission qualify as having been validly obtained, the record must establish that certain procedural requirements have been met: the admitted conduct must constitute the essential elements of a crime in the jurisdiction in which it occurred; the applicant must have been provided with the definition and essential elements of the crime prior to his or her admission; the applicant must admit the conduct constituting the essential elements of the crime and that he or she committed the offense; and the applicant's admission must be voluntary. *Id.*

These requirements have been incorporated into the Foreign Affairs Manual (FAM) of the Department of State for use by consular officers overseas in determining inadmissibility and are found in section 40.21(a), Note 5.1 of Volume 9 of the FAM, which states, in pertinent part:

> If it is necessary to question an alien for the purpose of determining whether the alien is ineligible to receive a visa as a person who has admitted the commission of the essential elements of a crime involving moral turpitude, the consular officer shall make the verbatim transcript of the proceedings under oath a part of the record. In eliciting admissions from visa applicants concerning the commission of criminal offenses, the consular officer must observe carefully the following rules of procedure which have been imposed by judicial and Board of Immigration Appeals decisions:
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> > (1) You should give the alien a full explanation of the purpose of the questioning. The applicant must then be placed under oath and the proceedings must be recorded verbatim.
> > (2) The crime, which the alien has admitted, must appear to constitute moral turpitude based on the statute and statements from the alien. It is not necessary for the alien to admit that the crime involves moral turpitude.
> > (3) Before the actual questioning, the consular officer shall give the applicant an adequate definition of the crime, including all essential elements. The consular officer must explain the definition to the applicant in terms he or she understands, making certain it conforms to the law of the jurisdiction where the offense is alleged to have been committed.
> > (4) The applicant must then admit all the factual elements which constituted the crime.
> > (5) The applicant's admission of the crime must be explicit, unequivocal and unqualified.

As the applicant has not been convicted of the crime of statutory rape in any criminal proceeding, finding him to have admitted to the essential elements of this crime requires due process, in accordance with the process described in 9 FAM section 40.21(a) N5.1. The record does not contain sufficient evidence to establish that the applicant in the present case has made such an admission.

Accordingly, the AAO concludes that the applicant has not been convicted of a crime involving moral turpitude that would render him inadmissible section 212(a)(2)(A)(i)(I) of the Act. Therefore, the applicant does not require a waiver under section 212(h) of the Act, and the Field Office Director's findings in this regard will be withdrawn.

As observed by the Field Office Director, the record also indicates that the applicant, on his Form DS-230, Application for Immigrant Visa and Alien Registration, misrepresented his past by failing to

include his arrest in addition to his marriage to and divorce from the victim. There is insufficient information in the record to determine whether the applicant committed a material misrepresentation that renders him inadmissible under section 212(a)(6)(C)(i) of the Act. Therefore, the matter will be remanded to the Field Office Director for further consideration of this issue and adjudication of a waiver under section 212(i) of the Act if required.

ORDER: The Field Office Director's decision is withdrawn and the matter is remanded to the Field Office Director for further consideration and issuance of a new decision. If the new decision of the Field Office Director is adverse to the applicant, it shall be certified to the AAO for further review.