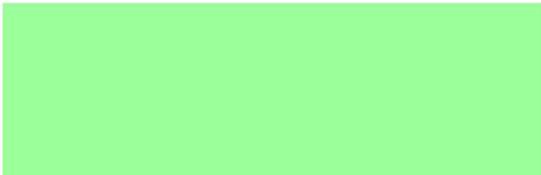




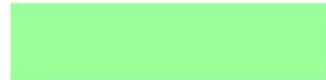
U.S. Citizenship
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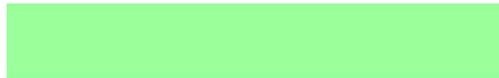


DATE: JUN 14 2013

Office: ACCRA, GHANA



IN RE:



APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act (the 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 with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a request 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, Accra, Ghana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States under 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. She seeks a waiver of inadmissibility under section 212(h) of the Act.

The field office director concluded that the applicant was statutorily ineligible for a waiver of inadmissibility because she had been convicted of an aggravated felony. Accordingly, the field office director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director*, dated August 30, 2012.

On appeal, the applicant contends that the field office director erred in finding that she had been convicted of an aggravated felony because the applicant's sentence was suspended. The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering this decision.

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

The Attorney General 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 . . . 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.

No 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 either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than seven years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

The record reflects that the applicant was admitted as a lawful permanent resident on November 8, 1980. On October 19, 1990, she was convicted of two counts of theft over \$20,000, a second degree felony, and sentenced to five years in prison for each count. On that same date, she was also convicted of two counts of forged checks, a third degree felony. She was sentenced to five years imprisonment for one count and ten years of imprisonment for the other count. On February 14, 1991, imposition of her jail sentence was suspended for all charges and she was placed on probation.

The field office director found the applicant's conviction for theft over \$20,000 to be a crime involving moral turpitude. As the applicant has not contested her inadmissibility on appeal, and the record does not show that determination to be in error, we will not disturb the finding that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

On appeal, the applicant contends that she is eligible for a waiver under section 212(h) of the Act because she has not been convicted of an aggravated felony. Section 101(a)(43)(G) of the Act provides that an aggravated felony includes "a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment [is] at least one year" In her Form I-290B, the applicant contends that section 101(a)(43)(G) of the Act "requires a sentence of 1 year. The applica[nt] was never in jail for a year. Her sentence[] was suspended."

However, section 101(a)(48)(B) of the Act provides that "any reference to a term of imprisonment of a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law *regardless of any suspension* of the imposition or execution of that imprisonment or sentence in whole or in part." (Emphasis added.) Therefore, although the applicant's sentence was suspended, it is considered a term of imprisonment under the Act and her conviction for theft over \$20,000 qualifies as an aggravated felony. The AAO need not consider the applicant's other convictions because her theft conviction renders her ineligible for a waiver of inadmissibility under section 212(h) of the Act. Accordingly, her appeal will be dismissed.

Additionally, the AAO notes that the field office director denied the applicant's Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, in the same decision. An application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United

States under another section of the Act, and no purpose would be served in granting the application. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964). As the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, no purpose would be served in granting her Form I-212.

ORDER: The appeal is dismissed.