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



U.S. Citizenship  
and Immigration  
Services

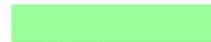


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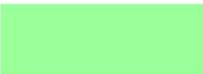
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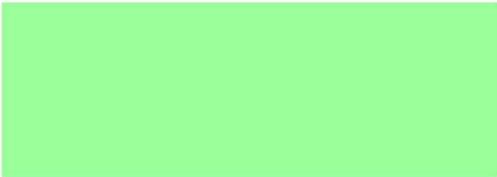
Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under sections 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.

If you believe the AAO inappropriately applied the law 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 with the field office or service center that originally decided your case by filing a Form I-190B, 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 a 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,

A handwritten signature in black ink, appearing to read "Michael Shumway".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the Field Office Director for proceedings consistent with this decision.

The applicant is a native and citizen of Romania 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 crimes involving moral turpitude. The applicant is married to a U.S. citizen. On December 21, 2010, he filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his U.S. citizen wife and children.

In a decision dated August 30, 2012, the field office director denied the Form I-601 application for a waiver, finding the applicant failed to establish that his U.S. citizen wife would experience extreme hardship as a consequence of his inadmissibility.

On appeal, counsel for the applicant asserts that the conduct which gave rise to the inadmissibility findings was waived when the applicant was granted conditional permanent resident status on October 4, 2005. Counsel contends that because the applicant disclosed his September 4, 2004 arrest to immigration officials at the time of his 2005 adjustment interview, the approval of that application was granted after consideration of the relevant admissibility issues. Counsel requests that, in the event the AAO were to find the applicant is required to file a new Form I-601, the AAO remand this matter to the Field Office for consideration of hardship evidence regarding the applicant's children, who are qualifying relatives in these proceedings.

The record contains, but is not limited to: counsel's brief; statements by the applicant's wife; character reference letters; country conditions documentation; financial documentation; pay stubs and income tax returns; copies of birth certificates and naturalization certificates; and documentation regarding the applicant's criminal history.

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 has been reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act provides, in pertinent part, that:

- (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 evidence reflects that this is the applicant's second Form I-601 waiver application. A review of the record of proceedings indicates that the applicant was arrested in Downingtown, PA,

on August 16, 2004, on an outstanding warrant related to unresolved criminal charges in Georgia. On September 1, 2004, the applicant was charged in the Superior Court of Gwinnett County, Georgia, with three separate counts of forgery, theft by deception, receiving stolen property and theft by taking. On April 12, 2005, the applicant pled guilty to forgery in the first degree in violation of O.C.G.A. § 16-9-1. The Superior Court withheld adjudication of guilt and placed the applicant on probation for a period of five years. Though counsel contends on appeal that this is not a conviction for immigration purposes, we note that the applicant's conviction squarely falls within the second prong of the "conviction" definition found in the Act. *See* Section 101(a)(48) of the Act ("The term "conviction" means, with respect to an alien, ..., if adjudication of guilt has been withheld, where- (i) the alien has entered a plea of guilty ..., and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed."); *see also Matter of Punu*, 22 I&N Dec. 224, 227 (BIA 1998) (noting that section 101(a)(48) of the Act clarifies Congressional intent that even in cases where adjudication is "deferred," the original finding or confession of guilt is sufficient to establish a conviction for purposes of the immigration laws). Accordingly, the applicant's April 12, 2005 guilty plea and sentence of probation for forgery constitutes a "conviction" for immigration purposes.

On May 12, 2005, the applicant filed his first Form I-601 waiver application. The applicant specified in Page 1, question 10 of the Form I-601 that the only crime rendering him inadmissible under section 212(a)(2)(A)(i)(I) of the Act was his April 12, 2005 forgery in the first degree conviction. On October 3, 2005, USCIS approved the applicant's waiver application. The Form I-607 associated with the approval reflects that forgery was the crime upon which inadmissibility was determined. The Form I-607 further reflects that the applicant established that denial of admission would result in extreme hardship to his U.S. citizen wife. Thus, the first proceeding was concluded on October 3, 2005, when USCIS granted the applicant a waiver under section 212(h) of the Act.

The waiver application now under review was filed on December 27, 2007, in connection with a second Application to Register Permanent Residence or Adjust Status (Form I-485). Though the record reflects that the applicant's first waiver application was approved, the applicant's conditional resident status was terminated by operation of law after the applicant failed to file the required Petition to Remove the Conditions on Residence (Form I-751) on the second anniversary of receipt of status. *See* Section 216(c) of the Act. The applicant therefore filed a second Form I-485. *See Matter of Stockwell*, 20 I&N Dec. 309 (BIA 1991) (noting that an alien is not barred from adjustment of status simply because the conditional resident status he held was terminated).

The applicant's second waiver application was necessary upon his July 18, 2006 conviction in the Superior Court of Gwinnett County, Georgia, of theft by taking in violation of O.C.G.A. § 16-8-2. For this offense, the applicant was sentenced to five years of probation. It appears that this conviction is related to the applicant's August 16, 2004 arrest, but was separately addressed by the Georgia Superior Court. Neither counsel nor the applicant has set forth an explanation as to why all of the charges against the applicant were not disposed at the same time. Nevertheless, the field office director found the applicant inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act. On appeal, counsel concedes that theft by taking in violation of O.C.G.A. § 16-8-2 is a crime involving moral turpitude. As the applicant has not disputed that this theft by taking conviction renders him

inadmissible for having been convicted of a crime involving moral turpitude, and the record does not show the finding to be erroneous, the AAO will not disturb the finding of the field office director.

Counsel contends on appeal that since the applicant revealed his August 16, 2004 arrest to immigration officers and USCIS subsequently granted the Form I-601 waiver, the conduct that gave rise to the charges has been waived. However, we note that the only crime the applicant listed in his first waiver application as forming the basis of inadmissibility was forgery in the first degree. Moreover, Form I-607 reveals that the only inadmissibility USCIS waived when it granted the applicant's waiver application was his inadmissibility for the crime of forgery. A waiver granted under section 212(h) applies only to "those crimes, events or incidents specified in the application for waiver." 8 C.F.R. § 212.7(a)(4). Furthermore, although a waiver is generally valid indefinitely, "any waiver which is granted to an alien who obtains lawful permanent residence on a conditional basis under section 216 of the Act shall automatically terminate concurrently with the termination of such residence...." *Id.* Accordingly, the applicant's July 18, 2006 conviction for theft by taking renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act, inadmissibility that has never been waived, and the applicant requires a waiver of inadmissibility for his convictions for crimes involving moral turpitude.

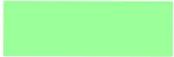
Section 212(h) of the Act provides, in pertinent part:

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

. . .

(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 . . . .

The AAO notes that a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act is first dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member, which includes the applicant's U.S. citizen or lawful permanent resident spouse, son, or daughter. Here, the field office director appears only to have considered hardship to the applicant's U.S. citizen wife when rendering her decision on the section 212(h) waiver application. However, the record evidence indicates that the applicant claims to have two U.S. citizen children who are qualifying relatives in these proceedings. Counsel specifically requests that the AAO remand the matter to the Philadelphia Field Office for consideration of evidence regarding extreme hardship to the applicant's qualifying relative son and daughter. Therefore, the AAO remands the matter to the Field Office Director for further examination of the applicant's Form I-601 waiver application. The field office director will give the applicant an opportunity to present evidence to establish eligibility for a section 212(h)(1)(B) waiver based upon extreme hardship to his qualifying relative children. The Field Office Director will then issue a new decision addressing the merits of the applicant's Form I-601 waiver application. If that



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decision is adverse to the applicant, it will be certified to the AAO for review in accordance with the procedures set forth in 8 C.F.R. § 103.4.

**ORDER:** The matter is remanded to the Field Office Director for further proceedings consistent with this decision.