

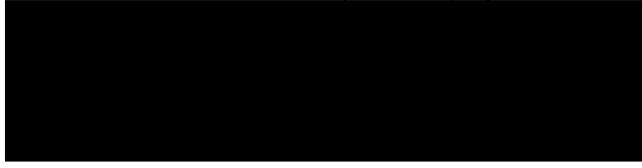


U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D. C. 20536

A2



FILE: [Redacted] Office: Seoul

Date: NOV 27 2000

IN RE: Applicant: [Redacted]

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

IN BEHALF OF APPLICANT: Self-represented

Identifying case decided to prevent clearly unjustified invasion of personal privacy

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Seoul, Korea, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Korea who was found to be inadmissible to the United States by a consular officer under § 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 was lawfully admitted for permanent residence on January 25, 1985 and, through his own statement, abandoned that status in January 1994 by returning to Korea. He married a native of Korea in December 1983 in Korea who became a naturalized U.S. citizen in June 1989. The applicant is the beneficiary of an approved petition for alien relative. He seeks a waiver of this permanent bar to admission as provided under § 212(h) of the Act, 8 U.S.C. 1182(h), to return to the United States and reside with his wife and two children.

The officer in charge concluded that the applicant was statutorily ineligible for the waiver for having been convicted of an aggravated felony after having been admitted to the United States as a lawful permanent resident and denied the application accordingly.

On appeal, the applicant discusses the circumstances relating to his prior convictions and expresses remorse. The applicant then states how he misses his children.

The record reflects the following according to the FBI identification record:

- (1) On September 16, 1990, the applicant was charged with Burglary, Second Degree. He was convicted of that charge and sentenced to two years in jail and placed on probation for six months.
- (2) On December 24, 1992, he was charged with Inflicting Corporal Injury on Spouse Cohab.

Since court dispositions of the two incidents are not included in the record of proceeding, it is unclear from the record whether the applicant actually served any jail time for either sentence. The consular officer viewed the violations as 2nd degree burglary and misdemeanor violence (spousal abuse).

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(2) CRIMINAL AND RELATED GROUNDS.-

(A) CONVICTION OF CERTAIN CRIMES.-

(i) IN GENERAL.-Except as provided in clause (ii), any 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(h) WAIVER OF SUBSECTION (a)(2)(A)(i)(I), (II), (B), (D), AND (E).-The Attorney General may, in his discretion, waive application of subparagraph (A)(i)(I),...of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if-

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General 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; or

(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 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; and

(2) the Attorney General, 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 for adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. 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 7 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.

Section 101(a)(43) of the Act, 8 U.S.C. 1101(a)(43). The term "aggravated felony" means-

(G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment (is) at least 1 year;...

Here, the applicant was convicted of the offense of burglary and was sentenced to a term of imprisonment of at least 1 year. Therefore, his violation qualifies as an aggravated felony. Since he was convicted of an aggravated felony after being lawfully admitted for permanent residence, he is statutorily ineligible for a waiver under § 212(h) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under § 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. Matter of Ngai, supra. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.