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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
BCIS, AAO, 20 Mass., 3/f
Washington, D.C. 20536

FILE: [redacted] Office: Manila, Philippines Date: SEP 2 8 2003

IN RE: Applicant: [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

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Manila, Philippines, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who resides in the Philippines and is married to a United States (U.S.) legal permanent resident. The applicant applied for an immigrant visa at the U.S. Consulate in Manila, Philippines in December 2001. He was found to be inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act) for having been convicted in the Philippines of a crime involving moral turpitude (frustrated homicide) on August 5, 1993. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his spouse and children.

The officer in charge (OIC) concluded that the applicant was statutorily ineligible for a waiver of the grounds of inadmissibility. The application was denied accordingly.

On appeal, the applicant asserts that his wife and children will suffer extreme hardship if he is not allowed to join them in the United States.

Section 212(a)(2)(A)(i) of the Act states in pertinent part:

> (1) 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].
>
> (ii) Exception. - Clause (i)(I) shall not apply to an alien who committed only one crime if-
>
> (I) the crime was committed when the alien was under 18 years of age . . . . or

> (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The applicant in the present case was over 18 years of age when he committed the crime of frustrated homicide and he was sentenced to more than one year of imprisonment for the crime. He thus does not meet the requirements for an exception as set forth in section 212(a)(2)(A)(ii) of the Act.

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

> The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . if-
>
> (1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that-
>
> > (i) [T]he 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, or
> >
> > (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 [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 . . . . 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 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 . . . .

The applicant in this case was convicted in the Philippines of frustrated homicide (attempted murder).[1] Therefore, pursuant to section 212(h)(2) of the Act, the applicant is statutorily ineligible for a waiver of inadmissibility under section 212(h) of the Act.

Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether the applicant has established extreme hardship to his wife or children or whether he merits the waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

ORDER: The appeal is dismissed.

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[1] The Court Information document states the applicant:

> [W]ith intent to kill, did . . . willfully, unlawfully, and feloniously stab one [redacted] with the use of a stainless bread knife hitting him on his right upper abdomen, thus performing all the acts of execution which could have produced the crime of homicide as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the perpetrator . . . .

See Republic of the Philippines, Third Judicial Region Trial Court, Information, dated September 7, 1990.