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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: PORTLAND, OREGON

Date:

AUG 16 2005

IN RE:

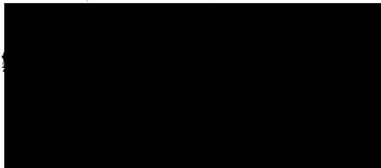
Applicant:



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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Portland, Oregon and its now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained, the decision of the acting district director will be withdrawn and the application declared moot.

The applicant is a native and citizen of Nicaragua 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 pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside with his lawful permanent resident (LPR) parents and U.S. citizen child.

The Acting District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon his qualifying family members. The application was denied accordingly. *See Acting District Director's Decision* dated March 20, 2003.

On appeal, counsel asserts that Citizenship and Immigration Services, (CIS) erred in finding the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Counsel claims that the applicant should be eligible for the exception under section 212(a)(2)(A)(ii)(II) of the Act. Furthermore counsel asserts that the acting district director misapplied the extreme hardship standard set forth in section 212(h) of the Act, and that the evidence in the record establishes extreme hardship to the applicant's qualifying relatives.

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

(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), or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), 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, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, 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 record reflects that on August 26, 1992 in the Los Angeles Superior Court of California the applicant was found guilty of second-degree burglary and sentenced to three years of probation.

On appeal, counsel asserts that the applicant's conviction for burglary in the second degree in violation of section 459 of the California Penal Code falls within the petty offense exception pursuant to section 212(a)(2)(A)(ii) of the Act.

California penal code section 461 states in pertinent part, that:

461. Burglary is punishable as follows:

. . . .

2. Burglary in the second degree: by imprisonment in the county jail not exceeding one year or in the state prison.

In the present case, the applicant was convicted of second-degree burglary under California penal code section 459. The record indicates that the maximum penalty for the applicant's crime was not to exceed one year in jail. The record indicates further that the applicant was not sentenced to any time of imprisonment. He was sentenced to three years probation. The evidence in the record thus establishes that the applicant's conviction falls within the petty offense exception set forth in the Act.

Counsel has established that the applicant was convicted of only one crime involving moral turpitude, that the crime qualifies under the petty offense exception to inadmissibility, and that the applicant is not otherwise inadmissible. Accordingly, the AAO finds that the applicant is not inadmissible. The applicant's waiver of inadmissibility application is thus moot and the March 20, 2003 acting district director's decision will be withdrawn.

ORDER: The appeal is sustained, the acting district director decision's is withdrawn and the application for waiver of inadmissibility declared moot.