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U.S. Citizenship
and Immigration
Services



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FILE: [REDACTED]

Office: ROME, ITALY

Date: AUG 14 2006

IN RE: [REDACTED]

PETITION: 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 PETITIONER:



MIRAC COPY

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the acting district director, Rome, Italy and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not inadmissible 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), thus the relevant waiver application is moot.

The applicant is a native and citizen of Italy 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 has a United States (U.S.) citizen spouse, and he seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may remain in the U.S. with his spouse.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon his qualifying relative. The application was denied accordingly.

On appeal, counsel asserts that the Citizenship and Immigration Services (CIS) erred in finding that the applicant did not demonstrate that his U.S. citizen spouse would suffer extreme hardship if the applicant were ordered removed from the United States.

In support of these assertions, counsel submits a brief. Also included in the record are an affidavit written by the applicant's spouse, dated June 29, 2006; medical laboratory results for the applicant's spouse, dated December 1, 2005 to June 9, 2006; medical office visit notes for the applicant's spouse, dated December 20, 2005, January 26, 2006, March 14, 2006, April 10, 2006, April 26, 2006, May 17, 2006, May 23, 2006, May 24, 2006, and June 5, 2006; psychiatric letter written for the applicant's spouse, [REDACTED] dated June 29, 2006; letter from [REDACTED] the applicant's spouse's son, dated June 23, 2006; letter from [REDACTED] the applicant's spouse's niece; letter from [REDACTED] the applicant's spouse's son, dated June 26, 2006; employment letter for the applicant's spouse; letter of potential employment for the applicant, dated June 1, 2005; letter from [REDACTED] the applicant's friend, dated June 16, 2005; letter from [REDACTED] the applicant's spouse's sister, dated June 27, 2005; affidavit of the applicant's spouse, dated July 8, 2005; employment letter for the applicant's spouse; psychiatric report for the applicant's spouse, [REDACTED] dated July 20, 2005; psychiatric letter for the applicant's spouse, [REDACTED] dated June 24, 2005; medical report for the applicant's spouse, [REDACTED] letter from the Reverend [REDACTED]; letter from [REDACTED] affidavit of the applicant; Decision of the Court of Appeals of L'Aquila, Republic of Italy, October 23, 2000; affidavit of the applicant's spouse, dated February 21, 2005; marriage certificate, dated December 21, 2002; U.S. passport of the applicant's spouse; foreigner's permit of stay for the applicant's spouse; divorce certificate of the applicant's spouse, dated April 16, 1987; divorce certificate of the applicant, dated February 16, 2000; U.S. birth certificate for the applicant's spouse; and bank statements from the applicant's spouse.

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

(A)(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.

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

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

. . . .

(1) (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

According to the record, the applicant was originally declared guilty of voluntary aggravated personal injury according to articles 58 583 N. 2 and 585 C.P. (Italian Penal Code) and was sentenced to two years and six months of imprisonment in addition to paying fees. *Decision of the Court of Appeals of L'Aquila, Republic of Italy, October 23, 2000*. The applicant appealed this decision. The court of appeals found the applicant guilty of violating art. 583 n.2 C.P. and redefined his sentence for "the residual crime of personal injury" to one year of imprisonment. *Id.*

Prior to addressing whether the applicant qualifies for the Form I-601 waiver, the AAO finds it necessary to address the issue of inadmissibility. The acting district director stated that "the record shows that the applicant was convicted of 'voluntary aggravated personal injury' (assault) in Italy on November 19, 1997, and was sentenced to 2 years and 6 months in prison, in addition to paying for damages. The sentence was later redefined to one year of imprisonment." *Decision of the acting district director, dated June 21, 2005*. The acting district director found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act for the conviction or commission of a crime involving moral turpitude. *Id.* The AAO finds the acting district director's decision was in error.

The acting district director's finding that the applicant was convicted of "voluntary aggravated personal injury" is incorrect, as the applicant appealed his conviction and the higher court redefined the applicant's sentence for "the residual crime of personal injury." Furthermore, the acting district director erred in concluding that personal injury is equated to assault, as there is no mention of assault in the court documents. *See Decision of the Court of Appeals of L'Aquila, Republic of Italy, October 23, 2000*.

In *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), the Board of Immigration Appeals (Board) held that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general.

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.) Neither the seriousness of the criminal offense nor the severity of the sentence imposed is determinative of whether a crime involves moral turpitude. *Matter of Serna*, 20 I&N Dec. 579, 581 (BIA 1992). Before one can be convicted of a crime of moral turpitude, the statute in question by its terms, must necessarily involve moral turpitude. *Matter of Esfandiary*, 16 I&N Dec. 659 (BIA 1979); *Matter of L-V-C*, 22 I&N Dec. 594, 603 (BIA 1999).

The Italian Penal Code under which the applicant was convicted states in relevant part the following:

Art. 583 Aggravating circumstance

The personal injury is serious, and applies the imprisonment from three to seven years

2) if the fact produces the permanent weakening of a sense or of an organ.

(See *Codice Penale*, Art. 583, n. 2)

The Italian court found the applicant to be guilty of this provision of law, as he had broken the tooth of another person and the “breaking of an incisor weakens the jaw in a permanent manner, notwithstanding the fact that the subsequent reconstruction could have mitigated the damage.” *Decision of the Court of Appeals of L’Aquila, Republic of Italy, October 23, 2000.*

The statute does not include any language of intent, willfulness, knowledge or even recklessness.¹ In *Matter of Perez-Contreras*, the BIA found that moral turpitude does not inhere where the required mens rea may not be determined from the statute. *Matter of Perez-Contreras*, at 618. Therefore, the AAO finds that this is not a crime involving moral turpitude.

Based on the record, the AAO finds that the applicant did not commit a crime involving moral turpitude and he is not inadmissible under sections 212(a)(2)(A) of the Act. The waiver filed pursuant to sections 212(h) of the Act is therefore moot.

¹ Additionally, the court found that had the applicant initially had the intention of physically assaulting the other individual, he would not have left behind such obvious tracks that would have allowed for his immediate identification. Nor would he have brought along a light wooden stick and a canister containing irritating spray, having had the possibility to provide himself in advance with more suitable tools such as blunt instruments. *Decision of the Court of Appeals of L’Aquila, Republic of Italy, October 23, 2000.*

In proceedings for application for waiver of grounds of inadmissibility under sections 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant is not required to file the waiver. Accordingly, the appeal will be dismissed as moot.

ORDER: The appeal is dismissed as the underlying application is moot.