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**U.S. Citizenship
and Immigration
Services**

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[Redacted]

FILE:

[Redacted]

Office: SAN ANTONIO, TX

Date: **DEC 01 2006**

IN RE:

[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:

[Redacted]

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Antonio, Texas 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) and the relevant waiver application is therefore moot.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude (four convictions for driving while intoxicated and four convictions for illegal entry). The record indicates that the applicant has a lawful permanent resident spouse, two lawful permanent resident children and four U.S. citizen children. The applicant seeks a waiver of inadmissibility in order to reside with his family in the United States.

The district director found that a person with a history of such activity is not deemed worthy of the privilege of adjustment of status and that the applicant remains statutorily inadmissible from the United States without chance of a waiver. *Decision of the District Director*, dated March 29, 2005. The application was denied accordingly. The AAO notes that the decision indicates that the applicant committed crimes involving moral turpitude, however, there is no analysis of whether his qualifying relatives would face extreme hardship pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h) or whether the applicant is entitled to a discretionary grant of the waiver subsequent to a finding of extreme hardship.

On appeal, counsel asserts that the denial is an abuse of discretion and the applicant has satisfied the legal requirements. *Form I-290B*, dated April 29, 2004.

The record includes, but is not limited to, counsel's brief and the applicant's record of conviction. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(2)(A) of the Act states 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.

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.

On or about April 22, 1966, June 17, 1976, June 25, 1976 and July 28, 1977, the record reflects that the applicant was convicted of entering the United States at a time or place not designated by immigration officers (i.e. illegal entry) pursuant to 8 U.S.C. § 1325. In addition, the record reflects that the applicant was convicted on four different occasions of the offense of driving while intoxicated (DWI). These convictions occurred on or about May 28, 1976, October 17, 1978, August 20, 1980 and September 27, 1998. Finally, the applicant's criminal record includes an arrest for the offense of assault and bodily injury, but there is no indication that he was convicted of this offense. Although it is unclear which crime(s) the district director specifically found to involve moral turpitude, it is implied from the decision that the district director determined that all of the applicant's convictions render him inadmissible under section 212(a)(2)(A) of the Act.

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

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).

Counsel asserts that DWI is not a crime involving moral turpitude. *Brief in Support of Appeal*, at 3, dated September 9, 2005. Counsel cites *In Re Lopez-Meza*, 22 I&N 1188, 1194 (BIA 1999) which states that a simple DUI offense is not a crime involving moral turpitude. The relevant statute in this case, Texas Penal Code § 49.04, states:

- (a) A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place.

Therefore, the statute's language is analogous to a simple DUI offense and the crime does not involve moral turpitude.

Counsel asserts that illegal entry is not a crime involving moral turpitude and he cites *Rodriguez v. Campbell*, 8 F. 2d. 983 (5th Cir. 1925) which found that reentry after deportation is not a crime involving moral turpitude. *Brief in Support of Appeal*, at 2, 4. Therefore, the AAO finds that illegal entry into the United States 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 is not inadmissible under section 212(a)(2)(A) of the Act. The waiver filed pursuant to section 212(h) of the Act is therefore moot.

In proceedings for application for waiver of grounds of inadmissibility under section 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.