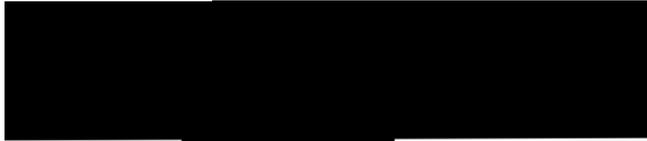


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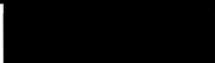
U.S. Citizenship
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FILE:



Office: LOS ANGELES DISTRICT OFFICE

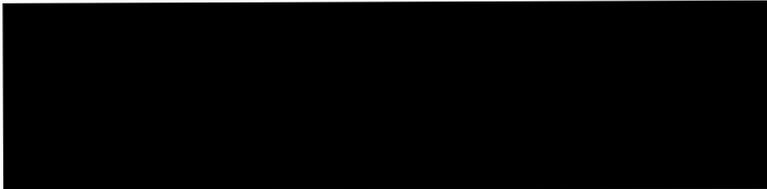
Date: **OCT 10 2006**

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the
Immigration and Nationality Act (INA), 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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the district director is withdrawn. The appeal will be dismissed, as the waiver application is moot.

The applicant, [REDACTED], a 46-year old citizen of Mexico, 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 crimes involving moral turpitude. The record indicates that the applicant's mother is a lawful permanent resident of the United States, that he resides with her and his U.S. citizen son, and that he is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his mother and U.S. citizen son.

The district director based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act, stating that, "[a] review of [the applicant's] record reveals that on February 13, 1992 [the applicant was] convicted of a violation of section 261.5 of the Penal Code, on two (2) counts, Unlawful Sexual Intercourse with a Minor, a felony, and sentenced to 180 days in county jail." *District Director's Decision*, dated January 27, 2005. The district director also found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative, his lawful permanent resident mother or his U.S. citizen son, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly, noting that even if extreme hardship had been established, the applicant's request for a waiver would be denied on a discretionary basis because "[t]he facts of your conviction are so grievous." *Id.*

On appeal, counsel for the applicant asserts that the district director erred in failing to conclude that the applicant's mother and son would suffer extreme hardship and in finding that the applicant does not merit discretionary approval. *Notice of Appeal to the Administrative Appeals Office (Form I-290B)*, undated, received by the Los Angeles District Office February 28, 2005. Although counsel indicated that a brief and/or evidence would be sent to the AAO within 30 days, to date, no brief or evidence has been received.

The record contains a letter from [REDACTED]'s mother stating that she and her grandson, [REDACTED] son, would be devastated if separated from [REDACTED], and that [REDACTED] is a hard-working dedicated father and son who has provided moral and loving support to both of them. The record also contains immigration records indicating that [REDACTED] entered the United States in 1986, applied for asylum in 1987 and appealed the denial to the Board of Immigration Appeals (BIA). His appeal to the BIA was ordered continued indefinitely in 1991 so that the applicant could apply for Temporary Protected Status (TPS) under the settlement agreement in *American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991). He was granted TPS and employment authorization beginning in 1991. Although the record fails to document completely [REDACTED] work history, a 1997 letter from an employer, income tax records for 1999, Employment Authorization Documents and Biographic Information (Form G-325) in the record indicate that he worked and paid taxes while lawfully residing in the United States for many years. [REDACTED]'s court reports are also in the record. The entire record was reviewed and considered in rendering this decision.

Upon review of the record, the AAO finds that the district director erred in concluding that [REDACTED] was convicted of two counts of a violation of section 261.5 of the California Penal Code (Cal. Penal Code). The record clearly indicates that [REDACTED] was charged with two counts but convicted of only one. Upon further review, the AAO finds that the applicant qualifies for the petty offense exception found in section 212(a)(2)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(2)(A)(ii), and is thus *not* inadmissible under Section 212(a)(2)(A) of the Act.

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

(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.

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

(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).

In the present case, the record shows that the applicant plead guilty to and was convicted of Unlawful Sexual Intercourse, in violation of Cal. Penal Code § 261.5 on March 30, 1992

Cal. Penal Code § 261.5 states in pertinent part:

(a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor . . . [i.e.,] a person under the age of 18 years.

(c) Any person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and *shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison.* (emphasis added).

The record shows that [REDACTED] engaged in sexual intercourse with a 16-year-old in 1990 or 1991, for which he was granted probation for three years and ordered to *spend the first 180 days in jail*, pay restitution of \$200, have no contact with the victim and undergo psychological counseling. The evidence in the record thus establishes that the applicant's conviction falls within the petty offense exception set forth in the Act, as the possible maximum penalty for the offense does not exceed imprisonment for one year, and the applicant received a sentence to imprisonment not in excess of six months. There is no evidence to indicate that [REDACTED] has any other record of arrests or convictions or has admitted to any other crimes or criminal acts.

The record establishes 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. [REDACTED]'s application for a waiver of inadmissibility is thus moot, and the January 27, 2005 district director decision will be withdrawn. The appeal is therefore dismissed.

ORDER: The January 27, 2005 district director decision is withdrawn and the appeal is dismissed.