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U.S. Citizenship  
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Services

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FILE:



Office: MANILA, PHILIPPINES

Date:

IN RE:



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:

SELF-REPRESENTED

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 Officer in Charge, Manila, Philippines and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States 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), for having been convicted of a crime involving moral turpitude. The applicant is the father of a naturalized citizen of the United States and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his son.

The Officer in Charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge, dated July 15, 2005.*

On appeal, the applicant contends that due to the successful termination of his probation, there is no final conviction of the crime. He also asserts that it has been emotionally and mentally difficult to be separated from his son for 30 years. *Form I-290B.*

In support of his assertions the record includes, but is not limited to the following documents: Information, Republic of the Philippines, Regional Trial Court, Third Judicial Region, Branch 64, Tarlac, Tarlac, May 4, 1987; Decision, Republic of the Philippines, Regional Trial Court, Third Judicial Region, Branch 64, Tarlac, Tarlac, June 7, 1988; Probation Order, Republic of the Philippines, Regional Trial Court, Third Judicial Region, Branch 64, Tarlac, Tarlac, October 7, 1988; and an Order, Republic of the Philippines, Regional Trial Court, First Judicial Region, Branch 21 – Vigan, April 29, 1991. The entire record was considered in rendering a decision on the appeal.

The record reflects that on June 7, 1988 the applicant was convicted of Reckless Imprudence Resulting in Homicide in the Philippines. *Decision, Republic of the Philippines, Regional Trial Court, Third Judicial Region, Branch 64, Tarlac, Tarlac, June 7, 1988.* The applicant was placed on probation for two years. *Probation Order, Republic of the Philippines, Regional Trial Court, Third Judicial Region, Branch 64, Tarlac, Tarlac, October 7, 1988.* The applicant successfully complied with all of the conditions of his probation and was deemed fully reformed and rehabilitated. *Order, Republic of the Philippines, Regional Trial Court, First Judicial Region, Branch 21 – Vigan, April 29, 1991.* The court noted that the applicant needed no further treatment and the probation period of two years terminated on January 3, 1991. *Id.* The court stated that the applicant's case is hereby closed and terminated. *Id.*

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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

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

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -

- (i) . . . the 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,
- (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 . . .

Although the applicant asserts that he no longer has a conviction because his case is now closed, a formal judgment of conviction was entered in his case and the decision cites to statements made by the applicant admitting to being at fault. *Decision, Republic of the Philippines, Regional Trial Court, Third Judicial Region, Branch 64, Tarlac, Tarlac, June 7, 1988*. Furthermore, although the record indicates that the applicant completed the terms of his probation, completing the course of punishment does not expunge the record.<sup>1</sup> The AAO therefore finds that, for U.S. immigration purposes, the applicant has been convicted. INA 8 U.S.C. § 101(a)(48)(A).

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.

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<sup>1</sup> Although the conviction took place in a country outside of the United States, in reference to expungements, the AAO notes that state court expungements are no longer considered to ameliorate the immigration consequences of a conviction. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999) vacated sub nom. *Lujan-Armendariz v. INS*, 222 F.3d 728 (9<sup>th</sup> Cir. 2000).

(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 applicant was convicted of Reckless Imprudence resulting in Homicide in the Philippines. Although there is a reckless element of this crime, the court specified in its decision that the applicant had acted willfully. *Decision, Republic of the Philippines, Regional Trial Court, Third Judicial Region, Branch 64, Tarlac, Tarlac, June 7, 1988*. The AAO finds that based on the conviction judgment in the record, the applicant has been convicted of a crime involving moral turpitude and is thus inadmissible under 212(a)(2)(A)(i)(I) of the Act.

The AAO notes however, that the Officer in Charge erred in determining that the applicant needed to show extreme hardship to his U.S. citizen son in order to qualify for a section 212(h) waiver. The criminal activities for which he is inadmissible occurred in 1986 and he was convicted for those activities on June 7, 1988, over 15 years ago. As previously noted, in cases where the activities that render the applicant inadmissible occurred more than 15 years prior to the date of the applicant's application for a visa, admission or adjustment of status, the applicant may also be eligible for a waiver by showing that he is not a national security risk and that he has been rehabilitated to qualify for a waiver. The applicant's 1986 arrest is his only arrest. *Supplement to Form I-601; Central Index System record search*. The 1991 court order terminating his probation finds the applicant to have faithfully complied with all the conditions of his probation and to be fully reformed and rehabilitated. *Order, Republic of the Philippines, Regional Trial Court, First Judicial Region, Branch 21 – Vigan, April 29, 1991*. The applicant has a U.S. citizen son. *Form I-130*. He is sixty-four years old and receives a pension in the Philippines. *Form I-290B*. The applicant has not been accruing unlawful presence in the United States, but has waited in the Philippines to immigrate legally. *Form I-290B*. The AAO finds that these favorable factors outweigh the unfavorable factors of one criminal conviction in 1988. The AAO therefore finds that the applicant qualifies for a 212(h) waiver for being inadmissible pursuant to 212(a)(2)(A)(i)(I) of the Act.

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 met his burden.

**ORDER:** The appeal is sustained.