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U.S. Citizenship
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Services

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FILE:



Office: LOS ANGELES, CA Date: JAN 31 2007

IN RE:



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:

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.

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

Robert P. Wiemann, Director
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 The decision of the District Director is withdrawn.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 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, a 26-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 Act for having been convicted of a crime involving moral turpitude. The record indicates that the applicant's parents are lawful permanent residents (LPRs) of the United States, that he resides with them, 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 parents.

In stating the ground of inadmissibility in this case, the District Director noted:

The record reflects that the Superior court of California, County of Los Angeles convicted you on March 26, 2001, of violating one count of California Penal Code § 236 "False Imprisonment," a felony. The record reflects that the Superior Court of California, County of Los Angeles sentenced you to 180 days in the Los Angeles County Jail, three years of probation, and a fine of \$200.

Decision of the District Director, dated April 18, 2005. The District Director also found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his LPR father. *Id.* The application was denied accordingly.

On appeal, the applicant asserts that no consideration was given to several key facts, including that the applicant was only eight years old when he came to the United States, that his parents would be heartbroken if he were forced to return to Mexico, that he has had a perfect record since his prior conviction and has successfully completed all the terms of his probation. *Notice of Appeal to the Administrative Appeals Office (Form I-290B)*, submitted May 10, 2005. The record also contains a Court Order noting that the applicant was convicted of the misdemeanor offense of violation of Section 236 of the California Penal Code on March 26, 2001, that he fulfilled the conditions of probation, and that "the plea, verdict, or finding of guilt in [this case] be set aside and vacated and a plea of not guilty be entered and that the complaint/information be, and is hereby dismissed."¹ *Petition and Order from the Superior Court of the State of California, County of Los Angeles*, dated March 24, 2004. Also included in the record are a copy of the electronic docket of his case and a "Progress Report Domestic Violence Batterers' Program, Anger Management" noting that the applicant successfully completed an Anger Management Program, worked on stress management skills, problem-solving skills and improving his communication skills. *Progress Report*, dated April 17, 2003. Also submitted in support of his request for a waiver were letters from his parents affirming that he lives with them and that he cares for them in many ways, including personally and financially and in seeing that their medical

¹ The AAO notes that the court amended the complaint in this case on March 24, 2004 to reduce the charge to a misdemeanor; the potential effects of that order and the referenced order to set aside and vacate the plea and dismiss the complaint are not addressed in this decision.

needs are met; proof of lawful residence for three siblings; a letter from the applicant's employer stating that the applicant has been employed full-time since 2002; and a 2003 income tax return showing earned income of \$19,263.

Upon review of the record, the AAO finds that the District Director erred in concluding that the applicant was inadmissible and needed a waiver of inadmissibility to be eligible for lawful permanent residence. 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)(i)(I) 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) (emphasis added).

In the present case, the record shows that the applicant plead guilty to and was convicted of False Imprisonment, in violation of Cal. Penal Code § 236, on March 26, 2001.

Cal. Penal Code §§ 236, 237 state in pertinent part:

236. False imprisonment is the unlawful violation of the personal liberty of another.

237.(a) False imprisonment is punishable by a fine not exceeding one thousand dollars (\$1,000) or by **imprisonment in the county jail for not more than one year**, or by both that fine and imprisonment. If the false imprisonment be effected by violence, menace, fraud, or deceit, it shall be punishable by imprisonment in the state prison (emphasis added).

The record shows that the applicant was sentenced to 180 days in the Los Angeles county jail and fined \$200. 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 the applicant 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, that the crime qualifies under the petty offense exception to inadmissibility, and that the applicant 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. As the applicant is not required to file the waiver, the appeal of the denial of the waiver will be dismissed.

ORDER: The April 18, 2005 District Director decision is withdrawn. The appeal is dismissed as the underlying application is moot.