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U.S. Citizenship
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Services

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FILE:

Office: MIAMI, FL

Date: JUN 21 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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Miami, Florida and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as moot, as the applicant has not been convicted for immigration purposes, and is thus not inadmissible to the United States.

The applicant is a native and citizen of Colombia who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I) for having been convicted of crimes involving moral turpitude. The applicant was fourteen years old at the time the events occurred. The applicant has two U.S. citizen parents and seeks a waiver of inadmissibility in order to reside with his family in the United States.

The acting district director, relying on the applicant's arrest affidavit, found that the applicant had been convicted of Burglary and Grand Theft. She then found that the applicant had failed to establish that his U.S. citizen parents would experience extreme hardship as a result of his inadmissibility. The waiver application was denied accordingly. *Decision of the Acting District Director*, dated June 18, 2006.

On appeal, the applicant's parents submit statements regarding the extreme hardship they would face if their son were removed from the United States.

The AAO finds that the acting district director erred in finding that the applicant has been convicted for immigration purposes.

The record reflects that the applicant was initially arrested for the crimes of Burglary and Grand Theft. *Arrest Affidavit*, dated October 3, 2001. However, the Adjudicatory Order for the Juvenile Division in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County Florida shows that the Grand Theft charge was abandoned by the court and that the applicant only admitted to having committed Burglary. *Adjudicatory Order*, dated November 8, 2001. Furthermore, the record shows that the Circuit Judge withheld the adjudication of delinquency and only required the applicant to be placed on community control under the supervision of the Department of Juvenile Justice to complete 50 hours of community service. *Probation Order*, November 8, 2001.

In its decision, *In re Miguel Devison-Charles*, 22 I&N Dec. 1362 (BIA 2000), the Board of Immigration Appeals (Board) stated, "[w]e have consistently held that juvenile delinquency proceedings are not criminal proceedings, that acts of juvenile delinquency are not crimes, and that findings of juvenile delinquency are not convictions for immigration purposes." *Devison-Charles* at 1365; see also *Matter of De La Nues*, 18 I&N Dec. 140 (BIA 1981) and *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981). Importantly, the Board added, "[w]e have also held that the standards established by Congress, as embodied in the FJDA (Federal Juvenile Delinquency Act), govern whether an offense is to be considered an act of delinquency or a crime." *Devison-Charles* at 1365.

The FJDA defines a 'juvenile' as 'a person who has not attained his eighteenth birthday, or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not attained his twenty-first birthday,' and 'juvenile delinquency' as 'the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult.'

The record shows that at the time of his arrest, the applicant was fourteen years old and as such was placed in juvenile proceedings. Moreover, the Probation Order shows that a finding of juvenile delinquency was withheld in the applicant's case. *Probation Order*, November 8, 2001. Therefore, not only has the applicant not been convicted of a crime, the record also shows that he was not found to be a juvenile delinquent.

As the record establishes that the applicant was not "convicted" for immigration purposes, he is not inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act and a section 212(h) waiver is not necessary. Accordingly, the Acting District Director's decision will be withdrawn and the appeal will be dismissed as moot.

ORDER: The Acting District Director's decision is withdrawn. The appeal is dismissed as moot.