

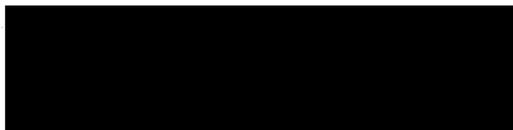
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

tlr

PUBLIC COPY



FILE: [REDACTED] Office: MIAMI, FL Date: MAR 05 2007

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:

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 District Director, Miami (Tampa), FL 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 Italy 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 (two convictions of petit theft). The record reflects that the applicant has a U.S. citizen spouse and child. The applicant seeks a waiver of inadmissibility in order to reside with her family in the United States.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the District Director*, dated September 25, 2006.

On appeal, the applicant details the dangerous environment for her family in Italy. *Form I-290B Attachment*, received October 24, 2006.

The record includes, but is not limited to, the applicant's statements, the applicant's adjustment of status application and the applicant's conviction records. 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.

The record reflects that the applicant pled guilty to petit theft on December 27, 2001 and pled nolo contendere to petit theft on August 25, 2005.

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). Before one can be convicted of a crime involving moral turpitude, the statute in question must involve moral turpitude. *Matter of Esfandiary*, 16 I&N Dec. 659 (BIA 1979). The Board has held that the courts and immigration authorities may look to the record of conviction if the statute under which an alien is convicted includes some offenses which involve moral turpitude and others which do not (i.e. a divisible statute), in order to determine the offense for which the alien was convicted. *See Matter of Short*, 20 I&N Dec. 136 (BIA 1989). The court in *Matter of Short* included the indictment, plea, verdict, and sentence in its definition of the record of conviction. *Matter of Short*, at 137-38. It is important to note that the record of conviction does not include the arrest report. *See In re Teixeira*, 21 I&N Dec. 316, 319-20 (BIA 1996).

The applicant's convictions were in violation of Florida Statute § 812.014, which states in pertinent part:

- (1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either **temporarily or permanently**:
  - (a) Deprive the other person of a right to the property or a benefit from the property.
  - (b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

In *Matter of Grazley*, the BIA held that theft is a crime involving moral turpitude only when a permanent taking is intended. *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973). In *Matter of Grazley*, the respondent was convicted under a Canadian theft statute which required the intent to deprive the owner, either temporarily or absolutely. *Id.* at 332. The BIA looked to the record of conviction to conclude that the respondent had intended a permanent taking, thus finding moral turpitude. *Id.* at 332-333. The applicant's information for her 2001 conviction states, in pertinent part:

... [redacted] ... did knowingly and unlawfully obtain or use or endeavor to obtain or use the property of another... with the intent to deprive T.J. Maxx of a right to the property or benefit therefrom, or with the intent to appropriate the property to her own use or to the use of another person not entitled thereto...

The applicant's information for her 2005 conviction states, in pertinent part:

...did knowingly and unlawfully obtain or use or endeavor to obtain or use the property of another...with the intent to deprive Beall's Outlet of a right to the property or benefit therefrom, or with the intent to appropriate the property to her own use or to the use of another person not entitled thereto...

Therefore, the applicant's record of conviction does not specify whether she intended to temporarily or permanently deprive the owners of their property. As such, the AAO cannot make a finding of commission of a crime of moral turpitude.

The AAO can only base its decision on prior case law and the record of conviction as defined by the Board. 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.