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U.S. Department of Homeland Security
20 Mass. Ave., NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship and Immigration Services

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PUBLIC COPY

[Redacted]

FILE: [Redacted]

Office: ATLANTA, GA

Date: MAR 28 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:

[Redacted]

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, Atlanta, Georgia 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). Thus, the waiver application is moot.

The applicant is a native and citizen of Jamaica 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 married to a U.S. citizen. He now 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 spouse.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated June 23, 2005.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of law in finding the applicant inadmissible for a crime involving moral turpitude and failing to meet the burden of establishing extreme hardship to a qualifying relative necessary for a waiver under 212(h) of the Act. *Form I-290B*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, court records for the applicant; statements from the applicant and his spouse; a psychological evaluation of the applicant's spouse; earnings and leave statements for the applicant and his spouse; tax statements for the applicant and his spouse; and a bank statement for the applicant and his spouse. The entire record was reviewed and considered in rendering this decision.

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.

(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).

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 -

(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 . . .

Section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

The record shows that on June 10, 2003 the applicant was convicted in Clayton County, Georgia for obstructing or hindering persons making emergency telephone calls. *Court records, State Court of Clayton County, State of Georgia*, dated June 10, 2003. The applicant was placed on probation for 12 months, ordered to perform 20 hours of community service, and ordered to pay a fine. *Id.*

Counsel asserts that the applicant's conviction does not constitute a crime involving moral turpitude, as obstructing/hindering an emergency call does not necessarily involve evil intent. *Attorney's brief*. The Official Code of Georgia states in pertinent part the following:

Section 16-10-24.3 Obstructing or hindering persons making emergency telephone calls

Any person who verbally or physically obstructs, prevents, or hinders another person with intent to cause or allow physical harm or injury to another person from making or completing a 9-1-1 telephone call or a call to any law enforcement agency to request police protection or to report the commission of a crime is guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine not to exceed \$1,000 or imprisonment not to exceed 12 months, or both.

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.

(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).

An intention to cause or allow physical harm or injury to another person is stated in the plain language of the Georgia statute. As such, the AAO finds that the applicant has been convicted of a crime involving moral turpitude. Although the applicant had been convicted of a crime involving moral turpitude, the maximum sentence for a section [REDACTED] violation of the Official Georgia Code is imprisonment for not more than one year. The applicant was not sentenced to any time in prison and this is his only conviction. As the maximum penalty for the single crime of which the applicant was convicted did not exceed imprisonment for one year and the applicant was not sentenced to a term of imprisonment in excess of six months, the AAO finds he is eligible for the exemption found in Section 212(a)(2)(A)(ii)(II) of the Act. The applicant is therefore not inadmissible under Section 212(a)(2)(A) of the Act. The waiver filed pursuant to section 212(h) of the Act is 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 the waiver application is moot.

ORDER: The appeal is dismissed as the underlying application is moot.