



U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]

Office: ATLANTA, GA

Date:

FEB 08 2008

IN RE:

Applicant:

[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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Ground of Inadmissibility (I-601 application) was denied by the District Director, Atlanta, Georgia, and the matter was appealed to the Administrative Appeals Office (AAO). The AAO rejected the appeal on September 27, 2006, based on a finding that the appeal was filed untimely. The AAO now moves to reopen the matter *sua sponte* based on new evidence establishing that the appeal was filed in a timely manner. The September 27, 2006, AAO decision will be withdrawn. The appeal will be dismissed and the applicant's I-601 application declared moot, as the applicant has not been convicted of, or admitted to committing the elements of, a crime involving moral turpitude, and is thus not inadmissible.

The applicant is a native and citizen of Ghana who was found to be inadmissible to the United States pursuant to 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 admitted to committing a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).

The district director determined that information contained in the applicant's 2002, U.S. Postal Service employment application, as well as the applicant's filing of an I-601 application, demonstrated that the applicant had admitted to misrepresenting himself as a U.S. citizen or lawful permanent resident in order to obtain employment with the U.S. Postal Service. The district director determined further that the applicant had failed to provide evidence establishing that a qualifying relative would suffer extreme hardship if he were denied admission into the United States. The I-601 application was denied accordingly.

On appeal the applicant indicates, through counsel, that he did not willfully or knowingly misrepresent his immigration status to the U.S. Postal Service when he replied, "yes" to the employment application question, "[a]re you one of the following: a United States citizen, a permanent resident alien, a citizen of American Samoa or any other territory owing allegiance to the United States?" The applicant asserts, through counsel, that he genuinely believed his answer was correct, given the fact that he had a pending lawful permanent residence application, and the fact that he provided the U.S. Postal Service with copies of his temporary Employment Authorization Document from the Immigration Service and his Social Security card stating, "[v]alid for work only with INS authorization." Through counsel, the applicant additionally asserts that his actions do not meet the definition of a crime involving moral turpitude. He asserts further that, in the event that he is found to be inadmissible, he has established that his U.S. citizen wife and his children would suffer extreme hardship if he were denied admission into the United States.

Section 212(a)(2)(A)(i) of the Act provides in pertinent part that:

[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 that:

The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . .

. . . .
(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 Board of Immigration Appeals (Board) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992) that:

[I]n 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. . . .

The Board stated in *Matter of Torres-Varela*, 232 I&N Dec. 78 (BIA 2001) that determination of whether a crime involves moral turpitude is based on the statutory definition of the offense, rather than the actual conduct by the individual.

Two Rural Carrier Associate, Statement of Understandings signed by the applicant on October 10, 2002, and contained in the record, state that:

Postal Service policy states that to be eligible for employment, an appointee must be either a U.S. citizen or a permanent resident alien. Applicants must provide proof of eligibility for employment, (i.e. picture identification or driver's license, and original Social Security card of birth certificate). If you are a permanent resident alien, you must provide INS Form I-151, Alien Registration Receipt card or INS Form I-551, Resident Alien.

. . . .

The above has been explained and I understand the information given concerning this position.

The applicant's application for employment with the U.S. Postal Service, signed by the applicant on October 10, 2002, reflects, on page 4, that the applicant answered, "yes" in response to the question that he was one of the following: a United States citizen, a permanent resident alien, a citizen of American Samoa or any other territory owing allegiance to the United States. The applicant's signature is contained on page 4 of the application. Located below the applicant's signature is a preprinted statement that:

A false or dishonest answer to any question in this application may be grounds for not employing you or for dismissing you after you begin work, and may be punishable by fine or imprisonment (US Code, Title 18, Sec. 1001).

18 U.S.C. § 1001 provides in pertinent part that:

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully –

. . . .

(2) makes any materially false, fictitious, or fraudulent statement or representation . . . shall be fined under this title or imprisoned not more than 5 years or both.

Referring to a conviction under 18 U.S.C. § 1101(a)(2), the 6th U.S. Circuit Court of Appeals found in *Kabonogo v. INS*, 837 F.2d 753, 758 (6th Cir. 1988) that a crime involving moral turpitude could be found, “[w]here a petitioner has acknowledged his false statements and the statements were made to defraud the United States Government.” *See also, Omagah v. Ashcroft*, 288 F.3d 254 (5th Cir. 2002.) The Board held in *Matter of K-*, 7 I&N Dec. 594 (BIA 1957) that, in order for an admission of acts which constitute the essential elements of a crime to be properly used as a basis for inadmissibility, three conditions must be met, including: 1) the admitted acts must constitute the essential elements of a crime in the jurisdiction in which they occurred; 2) the respondent must have been provided with the definition and essential elements of the crime prior to making the admission, and; 3) the admission must have been voluntary.

In the present matter, the applicant has not been charged with, or convicted of, a violation of 18 U.S.C. §1001(a)(2). Rather, the record reflects that the applicant signed a U.S. Postal Service employment application and related statements stating that he was a U.S. citizen, a permanent resident alien, a citizen of American Samoa or any other territory owing allegiance to the United States. The record contains no evidence that the applicant was provided with an actual definition of 18 U.S.C. § 1001, or that he admitted to understanding that he made a materially false, fictitious or fraudulent statement when he completed his U.S. Postal Service employment application. Rather, on his I-601 application, the applicant states only that he “[a]ccepted employment from the USPS with [his] work authorization permit.” Furthermore, the applicant indicates on appeal that he did not willfully or knowingly misrepresent his immigration status in his U.S. Postal Service employment application, and he asserts that he believed his answer was correct given that he had a pending lawful permanent residence application with the Immigration Service, and given the fact that he presented his temporary Employment Authorization Document and his “valid for work only with INS authorization, Social Security Card to U.S. Postal Service hiring officials.

Upon review of the evidence, the AAO finds that the applicant did not admit to having committed acts which constitute the essential elements of a crime involving moral turpitude, as defined in *matter of K-*, *supra*. The applicant is thus not inadmissible under section 212(a)(2)(A)(i)(I) of the Act and does not need to file a waiver. Because the applicant is not inadmissible, it is unnecessary to address whether he established that a qualifying family member would suffer extreme hardship for section 212(h) of the Act waiver purposes.

ORDER: The appeal is dismissed The application for a waiver of inadmissibility under section 212(h) of the Act is moot.