

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

[REDACTED]

FILE:

[REDACTED]

Office: SAN ANTONIO, TEXAS

Date: JUL 11 2008

IN RE:

Applicant:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

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 Interim District Director for Services, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The interim director's decision will be withdrawn and the matter remanded to the interim director to determine whether the applicant is inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i).

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the director denied, finding that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative. *Decision of the Interim District Director for Services*, dated April 26, 2003. Counsel submitted a timely appeal.

The AAO will first address the finding of inadmissible at 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 US 759 (1988); see also *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). Further, a misrepresentation made in connection with an application for a visa or other documents or entry into the United States is material if either the alien is excludable on the true facts or the misrepresentation tends to cut off a line of inquiry which might have resulted in the determination that he be excluded. *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1950; AG 1961).

The director found the applicant inadmissible for seeking admission into the United States by fraud or willful misrepresentation because the applicant failed to disclose that he had been arrested and/or convicted for a crime involving moral turpitude, which is an inadmissibility ground under section 212(a)(2) of the Act .

In the denial letter, the director stated that the applicant made no mention of any other criminal arrests other than the first driving while intoxicated charge in 1999, failing to indicate the following incidents:

- December 12, 1998, San Antonio, Texas, assault causing bodily injury/disposition unknown
- August 28, 1999, San Antonio, Texas, driving while intoxicated, 12 month probation, \$400 fine
- May 11, 2001, San Antonio, Texas, driving while intoxicated-2nd, disposition unknown

The AAO notes that the conviction listed by the applicant in the Form I-485 is for driving while intoxicated (July 12, 2001, 30 days jail, probation for 12 months, and fine and court costs) in Gonzalez, Texas is not the

applicant's first driving while intoxicated charge, which occurred in 1999. It is further noted that it is not clear whether the driving while intoxicated charge listed in the Form I-485 is the same as the arrest for driving while intoxicated on May 11, 2001. But the record contains limited information about the two, or perhaps three, driving while intoxicated arrests. The AAO therefore cannot determine whether the driving while intoxicated arrests were crimes of moral turpitude.

The record is clear that the applicant was convicted of assault bodily injury married, which is a crime of moral turpitude. Section 22.01(a)(1) of the Penal Code of Texas, the criminal statute under which the applicant was convicted, states that a person commits an assault if the person intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse. An offense under section 22.01(a)(1) is a Class A misdemeanor. Section 22.01(b) of the Penal Code of Texas. Because the BIA held a Texas misdemeanor conviction of assault with bodily injury to a spouse was a crime involving moral turpitude, *Matter of Deanda-Romo*, 23 I&N Dec. 597 (BIA 2003), the AAO finds that the applicant's assault offense would constitute a crime involving moral turpitude.

If the applicant's only crime of moral turpitude is the assault conviction, it would fit the petty offense exception in section 212(a)(2)(A)(ii)(II), which requires that the maximum penalty possible must not exceed imprisonment for one year, and the alien must not have been sentenced to a term of imprisonment in excess of 6 months, regardless of the extent to which the sentence was ultimately executed. With the applicant's conviction here, the sentence imposed was not in excess of 6 months in prison. See, *Matter of Deanda-Romo*, *supra* at 599. Section 12.21 of the Penal Code of Texas indicates that an individual found guilty of a Class A misdemeanor shall be punished by a fine or a confinement in jail for a term not to exceed one year, or both. Thus, the applicant qualifies for the petty offense exception.

However, because the record here contains limited information about the driving while intoxicated arrests, the AAO cannot determine whether they would involve moral turpitude. If they are not crimes of moral turpitude, then there is no fraud or misrepresentation because the applicant's assault conviction fits the petty offense exception and he would not be inadmissible had the truth been known.

Consequently, the director's decision will be withdrawn and this matter shall be remanded to the director, who should send a request to the applicant asking for all court dispositions so as to determine whether the driving while intoxicated convictions are crimes of moral turpitude. If the director's decision is adverse to the applicant, the director shall certify it to the AAO for review.

ORDER: The April 26, 2003 decision of the director is withdrawn. The matter is remanded to the director for entry of a new decision consistent with the directives of this opinion.