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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

[REDACTED]

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FILE:

[REDACTED]

Office: PHILADELPHIA, PA

Date:

JUL 14 2008

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 District Director, Philadelphia, Pennsylvania, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be sustained.

The applicant ( [REDACTED] ) is a native and citizen of El Salvador who was found 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 committing a crime involving moral turpitude. The applicant, who is married to a naturalized citizen of the United States, seeks a waiver of inadmissibility under section 212(h) of the Act. In denying the waiver application, the district director found the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the District Director*, dated November 29, 2004.

The AAO will first address the finding of inadmissibility.

Section 212(a)(2) of the Act states that:

(A)(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 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines “conviction” for immigration purposes as:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.

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 -

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –

- (i) . . . the activities for which the alien is inadmissible occurred more than 15 years

- before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated; or

(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 applicant has one conviction in Pennsylvania that occurred in 2002; he was convicted of disorderly conduct and sentenced to probation for 90 days and ordered to pay a fine. The applicant's other convictions occurred in California. On August 7, 1987, he was arrested for and convicted of petty theft with a prior, and sentenced to 24 months summary probation and 12 days in jail. On July 9, 1987, he was arrested for and convicted of petty theft with a prior, and sentenced to 24 months summary probation and 60 days in jail. In July 2, 1987, he was convicted of shoplifting and sentenced to summary probation and 60 days in jail. In 1985, he was convicted of petty theft with prior and was sentenced to 24 months summary probation and 60 days in jail. In 1983, he was convicted of Grand Theft Property and was sentenced to 24 months summary probation and 30 days in jail. In 1984, he was convicted of Litter Public or Private Property and fined. The record reflects that in California the applicant had been convicted of Drinking in Public and was sentenced to 2 days in jail, and ordered to pay a fine in 1982. The record is unclear as to whether the applicant was convicted of theft of personal property in 1982.

The applicant was convicted under Pa. Cons. Stat § 5503 for disorderly conduct, which states the following:

Pa. Cons. Stat § 5503. Disorderly conduct.

(a) Offense defined.--A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

1. engages in fighting or threatening, or in violent or tumultuous behavior;
2. makes unreasonable noise;
3. uses obscene language, or makes an obscene gesture; or
4. or creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

. . .

There is no clear-cut definition of moral turpitude. In *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), the Board of Immigration Appeals (BIA) held:

[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.

The AAO finds that in applying the holding in *Matter of Perez-Contreras* here, the conduct the Pennsylvania statute criminalizes does not constitute moral turpitude. Using obscene language or making an obscene gesture, or making unreasonable noise would not shock the public conscience as being inherently base, vile, or depraved. Engaging in conduct that causes public inconvenience, annoyance or alarm, or recklessly creates a risk of this, is not conduct that would shock the public conscience as being inherently base, vile, or depraved.

The applicant's other convictions, nearly all of which constitute crimes of moral turpitude, occurred at least 20 years ago. Section 212(h) of the Act provides that the Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I) of subsection (a)(2) if the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status. Since the criminal convictions for which the applicant was found inadmissible occurred more than 15 years ago, they are waivable under section 212(h)(1) of the Act.

Under section 212(h)(1)(A)(ii) of the Act, the applicant's admission to the United States must not be contrary to the national welfare, safety, or security of the United States and the applicant must establish that he or she has been rehabilitated.

The record suggests that the applicant has not been charged with any additional crimes since his 2002 conviction for disorderly conduct. The Biographic Information, Form G-325A, and the letters in the record from the applicant's employers show that he was gainfully employed in 2002 and 2004. He has paid taxes, as shown by the submitted income tax record for 2002. The letter by Reverend [REDACTED] with Our Mother of Good Counsel Church conveyed that he is impressed with the applicant's stability, integrity, and work habits, and his desire for self-improvement by taking a course in a local evening school. The letter by [REDACTED], a pastor of Our Mother of Good Counsel Church, stated that the applicant is diligent, respectful and sociable and an asset to their parish maintenance staff. The letter by Reverend [REDACTED] with Coordinator of Hispanic Ministry for Montgomery County, Saint Augustine R.C. Church, stated that he has known the applicant for five years and met the applicant through the work the applicant was doing with people who have dependency problems, and he stated that the applicant spent countless hours every week doing this work. The letter by [REDACTED], M.D., indicates that the applicant provides health insurance for his daughter. The record therefore indicates that the applicant's admission to the United States is not contrary to the national welfare, safety, or security of the United States and that he has been rehabilitated, as required by section 212(h)(1)(A)(ii) of the Act.

The applicant has established that the favorable factors in his application outweigh the unfavorable factors. The favorable factors are the applicant's U.S. citizen spouse and child, an approved I-130 petition, steady work history, payment of taxes, and community service; the negative factors are the applicant's convictions in the State of California and his conviction in the State of Pennsylvania, his illegal entries in the 1980's and periods of unauthorized presence. The AAO finds that the favorable factors outweigh the unfavorable factors, and that the I-601 application should be approved.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained and the application is approved.