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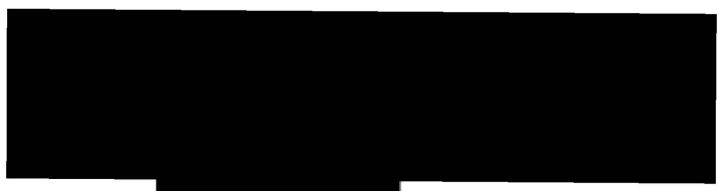
U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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712



FILE:

Office: VIENNA, AUSTRIA

Date: JUL 28 2008

IN RE:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer in Charge, Vienna, Austria and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the acting officer in charge will be withdrawn and the application declared moot.

The applicant is a native and citizen of Poland who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I) for having been convicted of a crime involving moral turpitude.¹ In addition, the acting officer in charge noted that the applicant had been arrested several times for minor offenses. The applicant has a U.S. citizen step-mother and a lawful permanent resident father; he seeks a waiver of inadmissibility in order to reside with his family in the United States.

The acting officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting Officer in Charge*, dated November 28, 2005.

On appeal, the applicant's U.S. citizen step-mother submitted the Form I-290B, Notice of Appeal, and a statement. As [REDACTED]

...The crime that was a fight at school over a girl. He was 16 Years old at that time and it happened at school.... My husband is relying on you and hopinh [sic] for you to look again at the application and let him see his son. His [sic] very depressed [sic] and sad, because teenager fight ruin his son future...

Form I-290B, dated December 15, 2005. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2) of the Act states in pertinent part, 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 212(h) of the Act provides, in pertinent part, that:

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

¹ Court documents indicate that the applicant struck "...twice with his fist the face of [REDACTED] a minor. As a result, [REDACTED] suffered an injury of the left eye and damage of three teeth, which had caused an impairment of the functioning of a bodily organ for a period not exceeding 7 days..." *Translation regarding Court File No. XII Now 62/03*, dated May 28, 2003.

....

(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 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 indicates that the applicant was arrested on three separate occasions, as outlined below:

1. Based on an incident in September 2001, the applicant was charged by the District Court, Family and Juvenile Division, of "...showing signs of demoralisation...in a public place he was found to be under the influence of alcohol..." *Translation regarding Case File No. XII Now 15/02*, dated March 18, 2002. The applicant was 14 years old at the time of the incident. As an educational measure, he was placed under the supervision of a probation officer, as outlined in the Juvenile Offenders Act.
2. Based on an August 2002 incident, the applicant was charged by the District Court, Family and Juvenile Section, with "...disturbed the peace...within the building...by playing loud music..." *Translation regarding Court File No. XII Now 14/03*, dated February 24, 2003. The applicant was 15 years old at the time of the incident. He was ordered to perform community service, pursuant to the terms of the Juvenile Procedure Act.
3. Based on a March 2003 incident, the applicant was charged by the District Court, Family and Juvenile Section, with battery, as previously referenced. The applicant was 16 years old at the time of the incident. Pursuant to the Juvenile Procedure Act, the applicant was ordered to perform community service.

In its decision, *In re Miguel Devison-Charles*, 22 I&N Dec. 1362 (BIA 2000), the Board of Immigration Appeals (Board) stated, "[w]e have consistently held that juvenile delinquency proceedings are not criminal proceedings, that acts of juvenile delinquency are not crimes, and that findings of juvenile delinquency are not convictions for immigration purposes.... juvenile delinquency adjudications are not criminal proceedings, but are adjudications that are civil in nature, wherein the applicable due process standard is fundamental fairness..." *Devison-Charles* at 1365-1366; *see also Matter of De La Nues*, 18 I&N Dec. 140 (BIA 1981) and *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981). Importantly, the Board added, "[w]e have also held that the standards established by Congress, as embodied in the FJDA (Federal Juvenile Delinquency Act), govern whether an offense is to be considered an act of delinquency or a crime." *Devison-Charles* at 1365.

The FJDA defines a 'juvenile' as 'a person who has not attained his eighteenth birthday, or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not attained his twenty-

first birthday,' and 'juvenile delinquency' as 'the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult.'

Moreover, in *Matter of Ramirez-Rivero*, the Board stated that "...In order for a foreign conviction to serve as a basis for a finding of inadmissibility, the conviction must be for conduct which is deemed criminal by U.S. standards. It is settled that an act of juvenile delinquency is not a crime in the United States and that an adjudication of delinquency is not a conviction for a crime within the meaning of our immigration laws..." *Matter of Ramirez*, at 137.

The record shows that at the time of the above-referenced incidents, the applicant's age ranged from 14-16 years old. Due to his age and the nature of the incidents, he was placed in juvenile proceedings. As a result of his actions, he either received community service and/or supervision by a probation officer. Therefore, the applicant's offenses lead to the court's determinations that they were acts of juvenile delinquency, not crimes.

²

² 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. Assault may or may not involve moral turpitude. Simple assault is generally not considered to be a crime involving moral turpitude.

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 notes that even if it was determined that the act of hitting another individual was a crime of moral turpitude, as outlined in *Matter of Perez-Contreras*, and not an act of juvenile delinquency, the applicant would not be inadmissible, as discussed below.

Section 212(a)(2)(A)(ii) of the Act states in pertinent part, that:

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

....

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed...more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States...

In the present case, as the applicant was 16 years old at the time he hit another minor, and as the incident occurred more than five years ago, in March 2003, the evidence in the record establishes that the applicant falls within the above-referenced exception set forth in the Act.

The record establishes that the applicant was found to have committed acts of juvenile delinquency, not crimes. Moreover, pursuant to *Devison-Charles*, the applicant was never “convicted” for immigration purposes. Thus, the AAO finds that the acting officer in charge erred in determining that the applicant was subject to section 212(a)(2)(A)(i)(I) of Act. As such, the waiver application is unnecessary and the issue of whether the applicant established exceptional hardship to a qualifying relative pursuant to section 212(h) of the Act is moot and will not be addressed. Accordingly, the appeal will be dismissed, the prior decision of the acting officer in charge is withdrawn and the instant application for a waiver is declared moot.

ORDER: The appeal is dismissed, the prior decision of the acting officer in charge is withdrawn and the instant application for a waiver is declared moot.