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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

Office: PHOENIX

Date:

OCT 30 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed because the underlying waiver application is moot. The matter will be returned to the district director for continued processing.

The applicant is a native and citizen of Mexico 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 been convicted of 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), in order to remain in the United States.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated April 26, 2006.

On appeal, the applicant contends that his wife and four children will suffer extreme hardship if he is prohibited from remaining in the United States. *Statement from Applicant*, dated April 16, 2006.

The record contains a copy of the marriage certificate of the applicant and his wife; copies of birth certificates for the applicant and his children; a copy of the applicant's wife's naturalization certificate; a statement from the applicant; letters from individuals attesting to the applicant's good character, and; documentation in connection with the applicant's criminal conviction. 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 [now Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) [or] (B) . . . of subsection (a)(2) . . . if -
 - (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 [now the Secretary of Homeland Security (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 record reflects that the applicant was convicted of possessing, selling, or manufacturing a dangerous weapon (short-barrel shotgun) under California Penal Code § 12020(a) on December 11, 1990, for which he received a sentence of 365 days in jail and three years of probation. The record shows that the applicant's crime was considered a misdemeanor pursuant to California Penal Code § 17(b)(3). The district director found that this crime constitutes a crime involving moral turpitude, and declared the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Upon review, the record does not support that the applicant has been convicted of a crime involving moral turpitude. California Penal Code § 12020(a) lists various weapons-related offenses that are criminalized in the State of California, including possession, manufacture, or sale. The record reflects that the applicant was convicted under California Penal Code § 12020(a) for an offense related to a short-barrel shotgun. However, documentation in connection with the applicant's conviction does not specify whether his wrongful conduct involved only possession of a short-barrel shotgun, or the manufacture or sale of such weapon. It is noted that, while the applicant received a 365-day jail sentence, he established that his conviction was considered a misdemeanor, which suggests that his conduct was not considered particularly egregious.

The Board of Immigration Appeals has found that possession of a dangerous weapon is not a crime involving moral turpitude for the purposes of determining inadmissibility under the Act. *See Matter of Serna*, 20 I&N Dec. 579 (BIA 1992), *modified on other grounds, Matter of Khourn*, 21 I&N Dec. 1041 (BIA 1997); *Matter of Granados*, 16 I&N Dec. 726 (BIA 1979). A reading of California Penal Code § 12020(a) does not settle whether the applicant was convicted of more than possession of a short-barrel shotgun. Thus, as possession of a short-barrel shotgun is not a crime involving moral turpitude, the record does not establish that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The record does not show that the applicant is inadmissible under other provisions of the Act for which he would require a Form I-601 application for a waiver. As such, the present Form I-601 application will be declared 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 has met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed as the underlying waiver application is moot. The district director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.