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

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/f
Washington, D.C. 20536

[REDACTED]

FILE: [REDACTED] Office: Miami

Date: APR 22 2003

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]

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The applicant is a native and citizen of Haiti who was found to be inadmissible to the United States under 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 is the son of a native of Haiti and naturalized U.S. citizen, and he is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of this permanent bar to admission as provided under section 212(h) of the Act, 8 U.S.C. § 1182(h).

The district director denied the application in the exercise of discretion based on what he noted as the number and severity of the applicant's convictions. The director did not address the issue of extreme hardship.

On appeal, counsel states that the applicant was convicted of one charge in August 1990 when he was 16 years old. Counsel states that the applicant is not inadmissible because the exception under section 212(a)(2)(A)(i)(I)(ii) applies to him. Counsel asserts that the applicant was under the age of 18 years, he was sentenced to time served, and he applied for permanent residence on October 9, 1997, more than five years after the date of conviction and completion of confinement.

The record reflects that the applicant was arrested and charged with two counts of Robbery with a Firearm. On August 2, 1990, he was convicted of one count of Grand Theft, and he was sentenced to time served. He was 16 years old at the time.

The record reflects that on March 15, 1989, at the age of 15, the applicant pleaded guilty to the offense of Strong Arm Robbery. He was convicted as a juvenile (delinquent child), and he was placed in community control.

On May 10, 1989 the applicant pleaded guilty to the offense of Attempted Arson. He was convicted as a juvenile (delinquent child), and he was ordered to participate in 50 hours of Community Service.

An act of juvenile delinquency is not a crime in the United States and an adjudication of delinquency is not a conviction of a crime within the meaning of the Immigration and Nationality Act.

In *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981), the Board of Immigration Appeals (the Board) held that pursuant to section 5032 of the Federal Juvenile Delinquency Act (FJDA), 18 U.S.C. § 5032, any juvenile within the jurisdiction of the federal courts alleged to have committed an act of juvenile delinquency while under 16 years of age is not subject to criminal prosecution as an adult regardless of the nature of the offense or the potential punishment.

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

(A)(i) Except as provided in clause (ii), any 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.

(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 (and the alien released from any confinement to a prison or correctional institution imposed for the crime) 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, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The applicant was convicted of only one crime, at 16 years of age. The two convictions of juvenile delinquency are not considered crimes. He therefore, qualifies for the above exception provided in section 212(a)(2)(A)(i)(I)(ii) of the Act, and the waiver application is not required. The appeal will be sustained, and the district director's decision will be withdrawn. The application is declared moot.

ORDER: The appeal is sustained. The district director's decision is withdrawn, and the application is declared moot.