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U.S. Citizenship
and Immigration
Services

H14

[Redacted]

FILE:

[Redacted]

Office: MANILA, PHILIPPINES

Date: **OCT 20 2005**

IN RE:

Applicant: [Redacted]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under § 212(a)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(2)(A).

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.

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Immigration Attache, Manila, Philippines. The matter is now before the AAO on appeal. The will be dismissed.

The applicant is a native and citizen of Fiji who seeks admission to the United States pursuant to a diversity visa. She was found to be inadmissible to the United States pursuant to § 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), as an alien convicted of a crime involving moral turpitude, that is, larceny. The applicant has applied for a waiver of inadmissibility pursuant to § 212(h) of the Act, 8 U.S.C. § 1182(h), so that she may enter the United States and reside with her lawful permanent resident (LPR) mother.

The acting immigration attache concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative, in this case, the applicant's lawful permanent resident (LPR) mother. The application was denied accordingly. On appeal, counsel asserts that the applicant's mother will suffer extreme hardship if the applicant is not admitted, as her mother suffers from high blood pressure, chronic cough, and dementia, and she requires the applicant's presence for her care. In addition, the applicant states that she was wrongfully convicted of larceny, and counsel contends that the applicant was abused by the police when she was arrested in Fiji.

The AAO notes that it is not possible to excuse a conviction based on the applicant's account of the judicial procedure. "[C]ollateral attacks upon an [applicant's] conviction do not operate to negate the finality of his conviction unless and until the conviction is overturned." *In Re Max Alejandro Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996) (citations omitted.) This office cannot go behind the judicial record to determine the guilt or innocence of an alien. *See id.*

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.

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

(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).

A crime involves moral turpitude where knowing or intentional conduct is an element of the offense. *Matter of Perez-Contreras*, 20 I&N Dec. 615, 618 (BIA 1992). In this case, the record indicates that the applicant was convicted of larceny, which includes the element of intentionally depriving an owner of his property. The AAO notes that the provision of Fijian law under which the applicant was convicted, § 262 of Act 17 of the Fiji Penal Code, provides for a potential term of imprisonment of five years. Thus, the applicant does not qualify for the inadmissibility exception set forth at § 212(a)(2)(A)(ii)(II) of the Act.

A waiver to this ground of inadmissibility is available, however. Section 212(h) of the Act provides, in pertinent part, that:

(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 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 committed the offence on February 22, 1997, which is less than fifteen years prior to this adjudication; hence, she is ineligible for the waiver described at § 212(h)(1)(A) of the Act. She may, however, apply for a waiver of the ground for inadmissibility stated at § 212(h)(1)(B) of the Act. In order to be eligible for this waiver, the applicant must show that her inadmissibility would cause extreme hardship to her LPR mother.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.