

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

44

PUBLIC COPY



FILE:



Office: MANILA

Date: JUL 13 2006

IN RE:



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

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, Director
Administrative Appeals Office

DISCUSSION: The Acting Officer in Charge (OIC), Manila, the Philippines, denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) in Washington, DC on appeal. The appeal will be sustained.

The applicant is a native and citizen of the Philippines 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 (INA, 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 married to a citizen of the United States. She seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that she may travel to the U.S. to join her husband.

The OIC concluded that the applicant failed to establish that extreme hardship would be imposed upon her husband if she were found inadmissible. The application was denied accordingly.

On appeal, the applicant's husband asserts that because the crime the applicant was convicted of does not constitute a crime in the United States, she is admissible. He also asserts that the applicant is eligible for the exceptions to inadmissibility found in both INA § 212(a)(2)(A)(ii)(I) and (II), 8 U.S.C. § 1182(a)(2)(A)(ii)(I) and (II). The applicant also presented evidence regarding the hardship that her husband would suffer if she were found inadmissible.

The entire record has been reviewed in reaching this decision.

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

(A)(i) In general. 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 record reflects that on April 28, 2003, the applicant was convicted in the Philippines of committing three counts of Batas Pambansa Bilang 22 (BPB 22). The essential elements BPB 22 are as follows:

- 1) the making, drawing and issuance of any check to apply to account or for value.
- 2) the knowledge of the maker, drawer or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment: and
- 3) subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment. *See, Order of the Municipal Trial Court, City of Davao, p.3, April 28, 2003.*

In order for the applicant to be found inadmissible under INA § 212(a)(2)(A)(i)(I), 8 U.S.C. § 1182(a)(2)(A)(i)(I), it must first be determined that the crime at issue is a crime involving moral turpitude (CIMT). The OIC did not explain why he found violation of BPB 22 to be a CIMT. *Decision of the OIC, September 22, 2004.* The Board of Immigration Appeals (BIA) has offered considerable guidance on whether a crime is a CIMT:

[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. *Matter of Perez-Contreras, 20 I&N Dec. 615, 617-18 (BIA 1992) (Citations omitted).*

The BIA also states:

In determining whether a crime involves moral turpitude, the specific statute under which the conviction occurred is controlling. If the statute defines a crime in which turpitude necessarily inheres, then, for immigration purposes, the offense is a crime involving

moral turpitude. [citations omitted] Thus, whether a particular crime involves moral turpitude "is determined by the statutory definition or by the nature of the crime not by the specific conduct that resulted in the conviction." *Matter of Torres-Varela*, 23 I. & N. Dec. 78, citing *McNaughton v. INS*, 612 F.2d 457, 459 (9th Cir. 1980).

In determining whether the applicant committed a CIMT, it is necessary to look at the elements of BPB 22 to determine whether conviction of that crime requires proof that the individual acted with a depraved or vicious mind. Conviction of BPB 22 in the Philippines does not expressly require proof of intention to defraud another. The knowledge element of BPB 22 requires only that the individual know that there are insufficient funds for payment. Knowledge of insufficient funds does not indicate a depraved or vicious mind. A conviction does not require intent to deceive or harm. The BIA has held that when a "bad check" statute does not expressly require intent to defraud as an element of the crime, but only requires that the check be issued with the knowledge that it is worthless, conviction of that statute does not constitute a CIMT. *See, Matter of Zangwill*, 18 I&N Dec. 22 (BIA 1981) (overruled for other reasons). Therefore, the applicant has not committed a CIMT. She is not inadmissible under INA § 212(a)(2)(A)(i)(I), 8 U.S.C. § 1182(a)(2)(A)(i)(I).

Because the applicant is not inadmissible and the application for waiver moot, no purpose would be served by evaluating whether the applicant has established that she qualifies for an exception to, or a waiver of, inadmissibility.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(2)(A) 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 sustained.

ORDER: The appeal is sustained.