

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



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

H4

FILE:

Office: VERMONT SERVICE CENTER

Date: **JUL 17 2006**

IN RE:

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

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 Director, Vermont Service Center, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On appeal, counsel requests oral argument. The regulation at 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. Citizenship and Immigration Services has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, the request is denied.

The applicant is a native and citizen of Italy who, on June 22, 1972, was admitted to the United States as a lawful permanent resident. On March 29, 1989, the applicant was convicted of three counts of disorderly conducted in violation of section 240.20 of the New York Penal Code and was sentenced to 15 days in jail and fines. On May 3, 1989, the applicant was convicted of petit larceny in violation of section 155.25 of the New York Penal Code and was sentenced to 3 years of probation and ten days in jail. On March 14, 1990, the applicant's probation was revoked and she was re-sentenced to 90 days in jail. On September 19, 1989, the applicant was convicted of petit larceny in violation of section 155.25 of the New York Penal Code and was sentenced to 50 hours of community service. On September 20, 1989, the applicant was convicted of possession of drug paraphernalia in violation of section 21A-267(A) of the Connecticut Penal Code and was sentenced to a fine. On June 4, 1990, the applicant was convicted of possession of stolen property in the 4th degree in violation of section 165.45 of the New York Penal Code and was sentenced to one year in jail. On April 1, 1996, the applicant was convicted of petit larceny in violation of section 155.25 of the New York Penal Code and was sentenced to 10 weekends in jail and 100 hours of community service. On June 24, 1998, the applicant was convicted of grand larceny in the 4th degree in violation of section 155.30 and was sentenced to 2 to 4 years in jail plus restitution in the amount of \$1,186. On March 29, 1999, the applicant was placed in proceedings. On April 14, 1999, the immigration judge denied the applicant's request for cancellation of removal and found her to be removable pursuant to section 237(a)(2)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1227(a)(2)(A)(ii), for being convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct at any time after admission. The applicant appealed the immigration judge's decision to the Board of Immigration Appeals (BIA). On August 12, 1999, the BIA dismissed the applicant's appeal.

The applicant filed a motion to reopen her conviction for grand larceny. On September 14, 1999, the applicant's conviction for grand larceny was vacated for constitutional reasons and the applicant was charged with scheme to defraud in the first degree in violation of section 190.65(1)(b) of the New York Code. On November 9, 1999, the applicant filed a motion to reopen before the immigration judge. On November 19, 1999, the applicant was convicted of scheme to defraud in violation of section 190.65(1)(b) of the New York Penal Code. On January 20, 2000, the applicant filed a motion to reopen before the BIA. On March 14, 2000, the immigration judge granted the applicant's motion to reopen and found the applicant to be removable pursuant to section 237(a)(2)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1227(a)(2)(A)(ii), for being convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct at any time after admission and noted that the applicant had also been convicted of an aggravated felony. The immigration judge ordered the applicant removed from the United States. On March 27, 2000, a warrant for the applicant's removal was issued. On May 8, 2000, the applicant was removed from the United States and returned to Italy where she has since remained. On May 24, 2000, the BIA denied the applicant's motion to reopen as untimely.

The applicant is the mother of two U.S. citizen children and the daughter of a lawful permanent resident. The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i) and seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to travel to the United States and reside with her U.S. citizen children and lawful permanent resident father.

The director determined that the applicant was removable under sections 237(a)(2)(A)(i)(I), 237(a)(2)(A)(i)(II), 237(a)(2)(A)(ii) and 237(a)(2)(A)(iii) of the Act, 8 U.S.C. §§ 1227(a)(2)(A)(i)(I), 1227(a)(2)(A)(i)(II), 1227(a)(2)(A)(ii) and 1227(a)(2)(A)(iii), for being convicted of a crime involving moral turpitude within ten years after the date of admission, convicted of a crime for which a sentence of one year or longer may be imposed, convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct at any time after admission, and convicted of an aggravated felony at any time after admission. The director found the applicant statutorily ineligible for a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182 (h). The director also found that the unfavorable factors in the applicant's case outweighed the favorable ones. The director denied the Form I-212 accordingly. *See Director's Decision* dated October 21, 2004.

On appeal, counsel contends that the applicant warrants a favorable exercise of discretion because of her length of residence in the United States and the extreme hardship her children are currently suffering because of her absence from the United States. *See Applicant's Brief*, dated November 17, 2004.

Section 101(43) of the Act states in pertinent part:

(43) The term "aggravated felony" means-

....

(G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment at least one year . . .

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

(1) Criminal and related grounds. —

(A) Conviction of certain crimes. —

(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.

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

Waiver of subsection (a)(2)(A)(i)(I) . . .

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I)
....

No waiver shall be provided under this subsection in the case of . . . an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if . . . since the date of such admission the alien has been convicted of an aggravated felony . . .

Before the AAO can weigh the discretionary factors in this case, it must first determine whether the applicant is eligible to apply for the relief requested. The AAO finds that the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of possession of stolen property, a crime involving moral turpitude. Section 165.45 of the New York Penal Code states, in pertinent part:

§ 165.45 Criminal possession of stolen property in the fourth degree.

A person is guilty of criminal possession of stolen property in the fourth degree when he knowingly possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof . . .

Criminal possession of stolen property in the fourth degree is a class E felony.

In *Matter of Salvail*, 17 I&N Dec. 19 (BIA) 1979), the BIA held that a conviction for possession of stolen goods is a conviction for a crime involving moral turpitude if knowledge of the stolen nature of the goods is an element of the offense. As such, the applicant's conviction for possession of stolen property is a crime involving moral turpitude.

The AAO finds that the applicant in the instant case does not qualify for a waiver under section 212(h) of the Act because she was convicted of possession of stolen property and sentenced to one year in jail, an aggravated felony, after she had been admitted to the United States as a lawful permanent resident.

Matter of Martinez-Torres, 10 I&N Dec. 776 (reg. Comm. 1964), held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

The applicant is subject to the provisions of section 212(a)(2)(A)(i)(I) of the Act, which are very specific and applicable. The applicant is not eligible for a waiver of this ground of inadmissibility under section 212(h) of the Act, therefore, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. As the applicant is statutorily inadmissible to the United States, the appeal will be dismissed.

ORDER: The appeal is dismissed.