U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: LOS ANGELES, CA Date: DEC 12 2006

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and the matter is now before the AAO on appeal. The applicant's waiver application will be declared moot and the appeal will be dismissed.

The applicant is a native and citizen of Mexico 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 crimes involving moral turpitude. The applicant is the son of a lawful permanent resident and the father of two U.S. citizen children. He 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 with his mother and children.

The district director concluded that the assertions provided in the affidavit of the applicant's mother and the evidence in the record does not support a finding that the applicant's mother would experience extreme hardship over and above the normal disruptions involved in separation of family members upon removal of the applicant. The application was denied accordingly. *Decision of the District Director*, dated February 17, 2005.

On appeal, counsel asserts that the applicant's parent will suffer extreme and unusual hardship if the applicant is removed from the United States. Counsel also asserts that the applicant's criminal convictions do not constitute crimes of moral turpitude. *Form I-290B*, dated March 3, 2005.

The record indicates that on March 24, 1998 the applicant was convicted of Domestic Battery, a misdemeanor under California Penal Code Section 242-243(e). On November 14, 1996 the applicant was convicted of Receiving/Concealing Stolen Property, under California Penal Code 496(a) and sentenced to 17 days in jail with three years probation.

The AAO notes that the applicant's conviction for domestic battery does not constitute a crime involving moral turpitude.

A crime involves "moral turpitude" if it is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general. *Matter of Olquin*, 23 I&N Dec. 896, 896 (BIA 2006); *Matter of Torres-Varela*, 23 I&N Dec. 78, 83 (BIA 2001); *see also Grageda v. U.S. INS*, 12 F.3d 919, 921 (9th Cir. 1993). Historically, a case-by-case approach has been employed to decide whether battery (or assault and battery) offenses involve moral turpitude. It has long been recognized that not all crimes involving the injurious touching of another reflect moral depravity on the part of the offender, even though they may carry the label of assault, aggravated assault, or battery under the law of the relevant jurisdiction. *Matter of B-*, 1 I&N Dec. 52, 58 (BIA, A.G. 1941); *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992); *Matter of Fualaau*, 21 I&N Dec. 475, 476 (BIA 1996). Moreover, it has often been found that moral turpitude necessarily inheres in assault and battery offenses that are defined by reference to the infliction of bodily harm upon a person whom society views as deserving of special protection, such as a child, a domestic partner, or a peace officer, because the intentional or knowing infliction of injury on such persons reflects a degenerate willingness on the part of the offender to prey on the vulnerable or to disregard his social duty to those who are entitled to his care and protection. *Garcia v. Att'y Gen. of U.S.*, 329 F.3d 1217, 1222 (11th Cir.2003); *Grageda v. INS*, *supra*; *Guerrero de Nodahl v. INS*, *supra*; *Matter of Tran*, 21 I&N Dec. 291 (BIA 1996); *Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988). In the applicant's case he was convicted of battering a former spouse in violation of Section 242-243(e)(1) of the California Penal Code.

In *In re Sanudo*, 23 I&N Dec. 968 (BIA 2006) the Board of Immigration Appeals found that:

> An alien's conviction for domestic battery in violation of sections 242 and 243(e)(1) of the California Penal Code does not qualify categorically as a conviction for a "crime involving moral turpitude"...

The BIA reasoned that where a conviction for domestic battery under California Penal Code, section 242 and 243(e)(1), does not show an injury to the victim or intent to injure the victim, that conviction cannot be deemed a crime involving moral turpitude. *Id.*

CPC § 242 defines "battery" as, "[a]ny willful and unlawful use of force or violence upon the person of another." Based on its definition, CPC § 242 is a broad statute that identifies misconduct that causes general bodily injury. The statute does not have a serious bodily injury element. One may be convicted of battery in California without using violence and without injuring or even intending to injure the victim. Nor does the statute refer to any aggravating circumstances that would lead to a finding that the applicant's crime was a crime involving moral turpitude.

In the applicant's case the record does not reflects that the battery committed was injurious to the victim or that it involved anything more than the minimal nonviolent "touching" necessary to constitute the offense. Thus, the existence of a former "domestic" relationship between the applicant and the victim is insufficient to establish that the crime committed was a crime of moral turpitude.

Therefore, the AAO finds that the applicant's March 24, 1998 domestic battery conviction does not constitute a crime involving moral turpitude.

The AAO also finds that the applicant's conviction under Section 496(a) of the California Penal Code falls under the petty offense exception in the Act.

Section 496(a) of the California Penal Code states:

> Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a state prison, or in a county jail for not more than one year.

Section 212(a)(i) 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-
>
> ....
>
> (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).

In the present case, the applicant was convicted of Receiving/Concealing Stolen Property under Section 496(a) of the California Penal Code. The record indicates that maximum penalty for the applicant's crime was 12 months in jail. The record indicates further that the applicant was sentenced to a 17-day term of imprisonment and 3 years probation. The evidence in the record thus establishes that the applicant's Section 496(a) conviction falls within the petty offense exception set forth in the Act.

In *Matter of Garcia-Hernandez,* 23 I&N Dec. 590 (BIA 2003), the Board held that a respondent who was convicted of more than one crime, only one of which was a crime involving moral turpitude, was eligible for the petty offense exception provided for under section 212(a)(2)(A)(ii) of the Act. The Board reasoned that:

> The "only one crime" proviso, taken in context, is subject to two principal interpretations: (1) that it is triggered . . . by the commission of any other crime, including a mere infraction; or (2) that it is triggered only by the commission of another crime involving moral turpitude . . . . [W]e construe the "only one crime" proviso as referring to . . . only one crime involving moral turpitude.

Matter of Garcia-Hernandez at 594.

The record establishes that the applicant was convicted of only one crime involving moral turpitude, that the crime qualifies under the petty offense exception to inadmissibility, and that the applicant is not otherwise inadmissible. Accordingly, the AAO finds that the applicant is not inadmissible. The applicant's waiver of inadmissibility application is thus moot and the appeal will be dismissed.

ORDER: The applicant's waiver application is declared moot and the appeal is dismissed.