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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: MEXICO CITY Date AUG 0 6 2009

IN RE: [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: 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Michael Grissom

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The District Director, Mexico City, denied the waiver application that is now before the Administrative Appeals Office (AAO) on appeal. The decision of the district director will be withdrawn, the waiver application declared moot, and the appeal dismissed.

The record contains various documents submitted by attorneys while this application has been pending. Although those attorneys have submitted Notices of Entry of Appearance (Form G-28), none of those notices has been executed by the applicant. In place of a signature, one of the attorneys noted that the applicant is not in the United States. The record contains no indication that the applicant has agreed to be represented by any of the attorneys who submitted those documents and no indication that he has consented to have information pertinent to his case released to them. The AAO will consider all of the documents and representations submitted, but the decision in this matter will be furnished only to the applicant.

The applicant is a native and citizen of El Salvador, the son of United States legal permanent resident (LPR) parents, the brother of four U.S. LPR siblings and one U.S. citizen sibling, and the beneficiary of an approved Form I-130 petition. The applicant was found to be inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act) for having been convicted of crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with parents and siblings.

The district director concluded that the applicant had not demonstrated that denial of the waiver application would result in extreme hardship to a qualifying relative as described in section 212(h) of the Act, and denied the application. On appeal, the applicant asserted that his parents would suffer extreme hardship if he is not allowed to join them in the United States.

Although the applicant did not appear to contest the district director's determination of inadmissibility, the AAO will review that determination.

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

> (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 . . . . 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 arrested, on April 30, 1994, in Rockville, Maryland, and charged with a violation of Maryland Article 27, Section 36B, carrying a handgun. On July 20, 1994, the applicant was convicted, pursuant to his plea, of that offense. On September 7, 1994, the applicant was placed on one year of supervised probation to be followed by one year of unsupervised probation, and was ordered to perform 32 hours of community service. On February 28, 1996, the applicant was found, pursuant to his admission, to be in violation of his probation. The judge ordered that the remainder of the applicant's probation be supervised. [redacted]

On April 22, 1995, the applicant was arrested, in Hyattsville, Maryland, for disorderly conduct and resisting arrest. On July 6, 1995, the applicant was convicted of disorderly conduct in violation of Maryland Article 27, Section 121. The applicant was sentenced to 60 days confinement, which sentence was suspended. [redacted]

The crime of carrying a handgun or other weapon is not generally considered to be a crime involving moral turpitude, absent the intent to injure someone with it. *U.S. ex rel. Andreacchi v. Curran*, 38 F.2d 498 (S.D.N.Y. 1926). The record in the instant case shows no aggravating factors that would cause the applicant's weapon offense to be a crime involving moral turpitude. The AAO finds that conviction is not a conviction of a crime involving moral turpitude.

Maryland Article 27, Section 123, the section of law pursuant to which the applicant was convicted of disorderly conduct, states,

> (a) A person may not act in a disorderly manner to the disturbance of the public peace, upon any public street, highway, alley, park or parking lot, or in any vehicle that is in or upon any street, highway, alley, park or parking lot, in any city, town, or county of this State, or at any place of public worship, or public resort or amusement in any city, town or county in this state, or in any store during business hours, or in any elevator, lobby or corridor of any office building or apartment house having more than three separate dwelling units, or in any public building in any city, town or county of this State.
>
> (b) Any person violating the prohibitions of this section is guilty of a misdemeanor, and upon conviction, shall be subject to a fine of not more than $500, or be confined in jail for a period of not more than 60 days or be both fined and imprisoned in the discretion of the court.

Disorderly conduct generally is not a CIMT where evil intent is not necessarily involved. See *Matter of S-*, 5 I. & N. Dec. 576 (BIA 1953), *Matter of P-*, 2 I. & N. Dec. 117 (BIA 1944), and *Matter of Mueller*, 11 I. & N. Dec. 268 BIA 1965). Further, no portion of the statute pursuant to which the applicant was convicted evinces a requirement of evil intent or purpose. The AAO finds that the applicant's conviction for disorderly conduct was not a conviction of a crime involving moral turpitude.

Neither of the two convictions upon which the decision of denial relied to show that the applicant had been convicted of a crime involving moral turpitude represents a conviction of a crime involving moral turpitude. Based on the record, the AAO finds that the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act, and that no other basis of inadmissibility appears in the record. The waiver filed pursuant to section 212(h) of the Act is therefore moot. As the applicant is not required to file a waiver application, the appeal of the denial of the waiver will be dismissed.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden.

ORDER: The decision of the district director is withdrawn, the waiver applicant is declared moot as the applicant is not inadmissible, and the appeal is dismissed.