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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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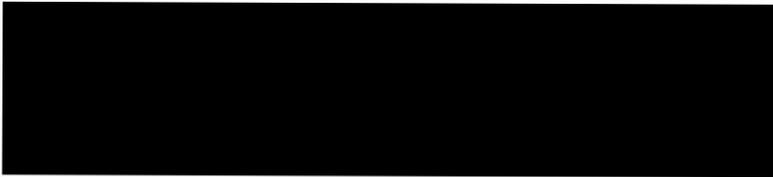
FILE: [REDACTED] Office: CHICAGO, IL

Date: JUN 05 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:



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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the district director will be withdrawn and the application declared moot. The matter will be returned to the district director for continued processing.

The applicant is a native and citizen of Poland who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I) for having been convicted of crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility under section 212(h) of the Act in order to reside with his U.S. citizen mother.

The director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated August 23, 2006

On appeal, former counsel for the applicant submits a memorandum, dated May 22, 2007. In addition, on March 6, 2008, former counsel for the applicant submitted additional documentation in support of the applicant's waiver request. The entire record was reviewed and considered in rendering this decision.

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.

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

The Attorney General [now Secretary, Homeland Security, (Secretary)] may, in his discretion, waive the application of subparagraphs (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 (Secretary) 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 . . .
- (2) The Attorney General (Secretary), in his discretion . . . has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

The record indicates that the applicant was convicted on three separate occasions, as outlined below:

1. In March 1986, the applicant was convicted in the District Court of Tarnow for the crime referred to in Article 184, Paragraph 1 of the Criminal Code of Poland. The applicant was sentenced to one year imprisonment with a three year conditional suspension of execution.
2. In March 1987, the applicant was convicted in the District Court of Tarnow for the crimes referred to in Article 184, Paragraph 1 and Article 156, Paragraph 1, of the Criminal Code of Poland. No prison sentence was imposed.
3. In February 1988, the applicant was convicted in the District Court of Tarnow for the crime referred to in Article 184, Paragraph 1 of the Criminal Code of Poland. The applicant was sentenced to one year imprisonment but the sentence was waived due to amnesty.¹

See Ruling and Certified Translation, dated May 12, 1997.

Former counsel asserts that the above-references convictions do not constitute convictions for crimes involving mortal turpitude. As further detailed by counsel:

¹ Article 156, Paragraph 1 of the Criminal Code of Poland states, in pertinent part:

Anyone who causes bodily injury or a serious disorder in a person's health...can be imprisoned for 6 months and up to 5 years.

Article 184, Paragraph 1 of the Criminal Code of Poland states, in pertinent part:

Anyone, who physically or morally victimizes a member of their own family or another individual who remains in a steady or transient dependent relation to the offender, or a minor or a helpless person, can be imprisoned for 6 months and up to 5 years.

Where a specific criminal intent is not an essential element of the offense, the offense will not be held to be a crime involving moral turpitude.... A conviction under both Art. 184 § 1 and Article 156 § 1 cannot constitute a crime of moral turpitude because the statute lacks an element of specific intent....

[D]omestic battery offenses found to be crimes of moral turpitude by courts of law are offenses which all have, as an element, the specific intent to harm.... The Polish statutes under which [redacted] [the applicant] was convicted do not contain any element of intent, and therefore do not constitute crimes of moral turpitude under Board or federal court case law....

Memorandum of Law in Support of Appeal, dated May 22, 2007.

The Board of Immigration Appeals [the Board] held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992) that:

[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. Assault may or may not involve moral turpitude. Simple assault is generally not considered to be a crime involving moral turpitude.

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.

(Citations omitted.) The AAO concurs with former counsel in finding that the applicant's convictions were not for crimes involving moral turpitude as knowing or intentional conduct was not an element of the offenses for which the applicant was convicted. The applicant is thus not subject to inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. As such, the waiver application is unnecessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(h) of the Act is moot and will not be addressed. Accordingly, the appeal will be dismissed, the prior decision of the district director is withdrawn and the instant application for a waiver is declared moot.

ORDER: The appeal is dismissed, the prior decision of the district director is withdrawn and the instant application for a waiver is declared moot. The director shall reopen the denial of the Form I-485, Application to Register Permanent Resident or Adjust Status, on motion and continue to process the adjustment application.