identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: MIAMI, FL (TAMPA) Date: MAR 10 2010

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. section 1182(h)

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying waiver application is moot.

The applicant is a native and citizen of Haiti. He was found to be inadmissible to the United States 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 Crimes Involving Moral Turpitude (CIMT). The applicant is the spouse of a U.S. citizen. The applicant 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.

The District Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on July 28, 2006.

On appeal, counsel for the applicant asserts that the applicant has not been imprisoned for more than five years and is thus not inadmissible.

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

> (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, that:

> (h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -
>
> . . . .
>
> > (1) (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 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 . . . .

The record reflects that the applicant was convicted of Carrying a Concealed Weapon, § 790.01 Florida Statutes Annotated (FSA), on October 13, 1995, in the Circuit Court of the 10th Judicial Circuit of Florida, Polk County. The applicant also has two convictions for Battery. The records for his battery convictions are not available, as indicated by records contained in the record of proceeding. The District Director concluded that, based on the applicant's criminal activities, he was inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I).

To qualify as a CIMT for purposes of the Act, a crime must involve both reprehensible conduct and some degree of scienter, whether specific intent, deliberateness, willfulness, or recklessness. *Matter of Cristoval Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008). Battery is not considered a CIMT. *Matter of Fualaau*, 21 I&N Dec. 475 (BIA 1996); *Matter of Perez-Contreras*, 20 I&N Dec. 615 (BIA 1992). Although the records for the applicant's battery convictions are no longer available, the AAO has no reason to believe that he is inadmissible based on these convictions. A conviction for Carrying a Concealed Weapon is also not a CIMT. *Matter of Granados*, 16 I&N Dec.726 (BIA 1979) *abrogated on other grounds*; *Cf. Matter of S---*, 8 I&N Dec. 344 (BIA 1959)(holding that carrying a concealed weapon with intent to use against another person is a CIMT). Accordingly, the applicant is not inadmissible to the United States for having been convicted of a CIMT.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. The appeal will be dismissed as the applicant is not inadmissible to the United States and the underlying waiver application is, therefore, moot.

ORDER: The appeal is dismissed as the underlying waiver application is moot.