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

U.S. Citizenship and Immigration Services

[redacted]

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DATE: OCT 2 6 2012 Office: CHICAGO, IL FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h), 8 U.S.C. §1182(h), of the Immigration and Nationality Act.

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying application is unnecessary. The matter will be returned to the Field Office Director for continued processing.

The applicant is a native and citizen of India who 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 multiple crimes involving moral turpitude. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The Field Office Director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated August 10, 2010. The applicant filed a timely appeal.

On appeal, counsel submits evidence that an Illinois circuit court has vacated the applicant's 1994 criminal convictions. *Illinois v. Sumar*, No. 94 CM 2499 (Ill. 18th J.Cir. Ct., Dec. 20, 1994). The applicant's remaining 2002 conviction is a crime involving moral turpitude which qualifies for the petty offense exception. As such, the applicant is no longer inadmissible and does not require a waiver for admission.

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

> (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.
> >
> > ...
>
> (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).

The applicant's 1994 conviction has been vacated and no longer renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The record shows that that the applicant was arrested on May 14, 1994 for Aggravated Assault with a Deadly Weapon, in violation of section 12-2(a)(1) of Act 5, Chapter 720 of the Illinois Compiled Statutes (720 ILCS 5/12-2(a)(1)) and Unlawful Use of Weapons—Possession Knife or Club, in violation of section 24-1(a)(2) of Act 5, Chapter 720 of the

Illinois Compiled Statutes (720 ILCS 5/24-1(a)(2)). On December 20, 1994, the applicant was convicted of these crimes when he pled guilty and was sentenced to one year conditional discharge, 40 hours of public-service employment, and court costs and fees. On March 22, 2011, the applicant's attorney filed a Motion to Withdraw Guilty Plea because the criminal court did not admonish the applicant of his statutory and constitutional rights before accepting his guilty plea in violation of Illinois Supreme Court Rule 402(a). On March 22, 2011, the court granted the motion. The applicant's guilty plea was withdrawn, the charges were dismissed and the applicant's arrest was resolved as [redacted] The record now shows that the applicant's 1994 guilty plea was vacated due to a procedural and substantive defect in the underlying criminal proceedings. Accordingly, the 1994 proceedings no longer constitute a conviction for immigration purposes. *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), *rev'd on other grounds, Pickering v. Gonzales*, 465 F.3d 263 (6th Cir. 2006); *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006). As the applicant's guilty plea has been withdrawn and his resultant conviction vacated, his 1994 arrest no longer renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The applicant's 2002 conviction also does not render him inadmissible because it falls within the petty offense exception to classification as a crime involving moral turpitude. The applicant was convicted of Bad Check/First Offense in violation of 720 ILCS 5/17-1(B)(d) on June 3, 2002, for which he was sentenced to one year conditional discharge, fined, ordered to pay restitution and served 30 days in jail. *Illinois v. Sumar*, No. 01 CF 000670 (Ill. 22nd J.Cir. Ct.. Jun. 3, 2002). Bad Check/First Offense is a Class A misdemeanor, punishable by any term less than one year. 720 Ill. Comp. Stat. 5/17-1(B)(Sentence), 5/5-8-3(a)(1) (West 2002). Consequently, the applicant's 2002 offense meets the petty offense exception at section 212(a)(2)(A)(ii)(II) of the Act and does not render him inadmissible as an alien convicted of a crime involving moral turpitude.

Because the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act, he does not require a waiver under section 212(h) of the Act. The August 10, 2010 decision of the Field Office Director will be withdrawn. The appeal will be dismissed as the underlying waiver application is unnecessary because the applicant is no longer inadmissible.

ORDER: The appeal is dismissed as the underlying waiver application is unnecessary. The Field Office Director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.