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U.S. Citizenship
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MAR 02 2005

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FILE:

[Redacted]

Office: BALTIMORE, MARYLAND

Date:

IN RE:

[Redacted]

APPLICATION:

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

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained, and the district director's decision will be withdrawn.

The applicant is a native and citizen of the People's Republic of China (PRC) who was found to be inadmissible to the United States under § 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 a crime involving moral turpitude. The applicant is married to a United States citizen and is the beneficiary of an approved petition for alien relative. She seeks a waiver of inadmissibility pursuant to § 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with her U.S. citizen husband and child.

In a decision dated June 27, 2003, the district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon her qualifying relatives. On appeal, counsel asserts that the applicant did not commit a crime involving moral turpitude. Counsel also contends that, if the infraction committed is deemed to be a crime involving moral turpitude, the district director erred in not finding that the applicant qualifies for the petty offense exception found in § 212(a)(2)(A)(ii) of the Act. Counsel asserts further that, in the event that the applicant is inadmissible, she has established that her husband and daughter would suffer extreme hardship if she is not granted a waiver of inadmissibility.

On appeal, counsel asserts that the applicant's December 2, 1999 conviction for engaging in prostitution under New Jersey Code of Criminal Justice (CCJ) § 2C:34-1(b)2 does not constitute a crime involving moral turpitude, since the crime was categorized as a disorderly persons offense for sentencing purposes. The AAO finds this assertion to be unconvincing. Counsel appears to confuse the "disorderly persons" degree of prostitution with the offense of "disorderly conduct." The applicant was not convicted of disorderly conduct, as counsel contends, but was convicted of engaging in prostitution. According to the New Jersey CCJ, there are various degrees within the category of prostitution, depending on the nature and number of offenses committed; for example, for repeat offenders there are first, second, third, and fourth degrees, while the category of disorderly persons offenses is for those convicted of engaging in prostitution for the first time, as was the applicant.

The Board of Immigration Appeals (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. . . .

(Citations omitted.)

Hence, prostitution itself is a crime involving moral turpitude, and the applicant pled guilty to, and was convicted of, prostitution. Her conviction, however, meets the requirements set forth for a petty offense exception under § 212(a)(2)(A)(ii) of the Act.

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

(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 engaging in prostitution under New Jersey CCJ § 2C:34-1(b)2, and the offense was classified as a disorderly persons offense. According to New Jersey CCJ §2C:43-9, the maximum penalty allowed for disorderly persons offenses is six months in jail. The record indicates that the applicant was sentenced to one year of probation, from which she was to be released upon payment of fines, which she did on the day of her conviction. There is no evidence that the applicant was convicted of any other crime before or since the offense in question.

The evidence in the record thus establishes that the applicant's conviction falls within the petty offense exception set forth in the Act, 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 AAO need not analyze the issue of extreme hardship.

ORDER: The June 27, 2003 decision of the district director denying the waiver application will be withdrawn.