



U.S. Citizenship  
and Immigration  
Services

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*A12*

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JUL 26 2007

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:

[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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be dismissed as the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), thus the relevant waiver application is moot.

The applicant is a native of Poland and citizen of Canada who was found to be inadmissible to the United States pursuant to section 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 committed a crime involving moral turpitude. The applicant is the husband of a naturalized citizen of the United States. The record contains the applicant's waiver of inadmissibility under section 212(h) of the Act.

The director concluded that the applicant had failed to establish that extreme hardship would be imposed on his qualifying relatives, and denied the Application for Waiver of Excludability (Form I-601). *Decision of the Director*, dated March 22, 2006.

The AAO will first address the director's finding that the applicant is inadmissible for committing a crime involving moral turpitude.

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 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines "conviction" for immigration purposes as:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

The director indicated that the record revealed that the applicant had convictions of battery and disorderly conduct. The record reflects that the applicant had been *charged* with battery and burglary on February 10, 2003. *Felony Information*. It shows that on August 18, 2003, he pled guilty to the reduced charges of first degree misdemeanor trespass (Fla. Stat. § 810.08(2)(B)); and first degree misdemeanor disorderly conduct (Fla. Stat. § 509.143). *Judgment, in the Circuit Court for the Sixth Judicial Circuit of Florida in and For Pasco County*. The director was correct in finding that the applicant was convicted of disorderly conduct; but he erred in concluding that the battery charge resulted in a battery conviction.

Florida's convicting statute for disorderly conduct reads as follows:

509.143 Disorderly conduct on the premises of an establishment; detention; arrest; immunity from liability.--

(1) An operator may take a person into custody and detain that person in a reasonable manner and for a reasonable time if the operator has probable cause to believe that the person was engaging in disorderly conduct in violation of s. 877.03 on the premises of the licensed establishment and that such conduct was creating a threat to the life or safety of the person or others. The operator shall call a law enforcement officer to the scene immediately after detaining a person under this subsection.

(2) A law enforcement officer may arrest, either on or off the premises of the licensed establishment and without a warrant, any person the officer has probable cause to believe violated s. 877.03 on the premises of a licensed establishment and, in the course of such violation, created a threat to the life or safety of the person or others.

(3) An operator or a law enforcement officer who detains a person under subsection (1) or makes an arrest under subsection (2) is not civilly or criminally liable for false arrest, false imprisonment, or unlawful detention on the basis of any action taken in compliance with subsection (1) or subsection (2).

(4) A person who resists the reasonable efforts of an operator or a law enforcement officer to detain or arrest that person in accordance with this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, unless the person did not know or did not have reason to know that the person seeking to make such detention or arrest was the operator of the establishment or a law enforcement officer.

The statute at Fla. Stat. § 877.03, referenced above, reads as follows:

877.03 Breach of the peace; disorderly conduct.--Whoever commits such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

The convicting statute in Florida for trespass states the following:

810.08 Trespass in structure or conveyance.--

(1) Whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so, commits the offense of trespass in a structure or conveyance.

(2)(a) Except as otherwise provided in this subsection, trespass in a structure or conveyance is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) If there is a human being in the structure or conveyance at the time the offender trespassed, attempted to trespass, or was in the structure or conveyance, the trespass in a

structure or conveyance is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

In determining whether the crimes of trespass or disorderly conduct qualify as a crime involving moral turpitude, relevant court decisions offer guidance. *In re Fualaau*, 21 I&N Dec. 475, 477 (BIA 1996), a case involving third-degree assault, the Board of Immigration Appeals (BIA) defined “moral turpitude” in the following manner:

Moral turpitude refers generally to conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general. Moral turpitude has been defined as an act which is per se morally reprehensible and intrinsically wrong, or malum in se, so it is the nature of the act itself and not the statutory prohibition of it which renders a crime one of moral turpitude.

In limited circumstances, disorderly conduct has been found to be a crime involving moral turpitude. *See, e.g., Hudson v. Esperdy*, 290 F.2d 879 (2d Cir.), *cert. denied*, 368 U.S. 918 (1961) [loitering for lewd purposes]; *Matter of Alfonso-Bermudez*, 12 I&N Dec. 225 (BIA 1967) [Soliciting charge].

The AAO finds that the applicant’s disorderly conduct conviction does not constitute a crime involving moral turpitude, as found in *Hudson v. Esperdy* and *Matter of Alfonso-Bermudez*. The record here does not specify under which of the provisions at Fla. Stat. § 509.143 the applicant was convicted. It is noted that the convicting statute refers to Fla. Stat. § 877.03; a person convicted under Fla. Stat. § 877.03 is guilty of a misdemeanor of the second degree. Here, the record reveals that the applicant was convicted of a misdemeanor of the first degree. He therefore did not violate Fla. Stat. § 877.03. The Felony Information contained in the record does not suggest that the applicant loitered for lewd purposes or engaged in solicitation. Accordingly, the applicant’s disorderly conduct conviction does not constitute a crime involving moral turpitude, as described in *Hudson v. Esperdy* and *Matter of Alfonso-Bermudez*.

With regard to a trespass conviction, in *Matter of Esfandiary*, 16 I&N Dec. 659 (BIA 1979) malicious trespass was found to involve a crime involving moral turpitude as it involved the intent to commit petit larceny, which is a crime involving moral turpitude.

As described at Fla. Stat. § 810.08(2)(B), the applicant’s trespass conviction did not involve the intent to commit petit larceny. Furthermore, the Felony Information contained in the record does not describe acts that would constitute malicious trespass. The AAO therefore finds that the applicant’s trespass conviction did not involve a crime of moral turpitude.

Based on the record, the AAO finds that the applicant did not commit a crime involving moral turpitude and he is not inadmissible under section 212(a)(2)(A) of the Act. The waiver filed pursuant to section 212(h) of the Act is therefore moot. As the applicant is not required to file the waiver, the appeal of the denial of the waiver will be dismissed.

**ORDER:** The March 22, 2006 decision of the director is withdrawn. The appeal is dismissed as the underlying application is moot.