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FILE:

[REDACTED]

Office: CHICAGO, IL

Date: MAR 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 District Director, Chicago, Illinois, denied the waiver application, and it 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 The appeal will be dismissed, the previous decision of the district director will be withdrawn and the application declared moot.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 applicant is a native and citizen of Ecuador 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 been convicted of crimes involving moral turpitude. The applicant is the daughter of a naturalized U.S. citizen mother and the mother of a U.S. citizen daughter. She seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with her mother and child.

The district 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 December 15, 2004.

The record reflects that, on February 23, 1996, the applicant was convicted of false statement to procure a credit or debit card in violation of paragraph 720, chapter 250-3 of the Illinois Compiled Statutes (ILCS). The applicant was sentenced to 10 days of community service and one year of supervision. On July 11, 2000, the applicant was convicted of retail theft in violation of paragraph 720, chapter 5/16A-3(a) of the ILCS. The applicant was fined and conditionally discharged for a period of one year. On September 16, 2002, the applicant's conviction for false statement to obtain a credit or debit card was expunged in the Circuit Court of Cook County, Illinois.

On December 8, 1998, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, counsel contends that the district director erred in finding that the applicant's conviction for false statement to obtain a credit or debit card is a crime involving moral turpitude and that in the alternative the applicant's mother would suffer extreme hardship. *See Counsel's Brief*, dated January 6, 2005. In support of the appeal, counsel submits the referenced brief, excerpts from the ILCS, copies of country condition reports and previously submitted documentation. The entire record was reviewed and considered in rendering a decision in this case.

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 . . . 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).

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if—

(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 . . .

The district director based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's conviction for false statement in procuring a credit or debit card. Counsel contests the district director's finding of inadmissibility. Counsel states that the district director erred in finding that the applicant's conviction for false statement in procuring a credit or debit card is a Class 4 felony. Paragraph 250-3 of the ILCS provides:

Sec. 3. A person who makes or causes to be made, either directly or indirectly, any false statement in writing, knowing it to be false and with intent that it be relied on, respecting his identity, his address or his employment, or that of any other person, firm or corporation, for the purpose of procuring the issuance of a credit card or debit card, is guilty of a Class 4 felony.

(Source: P.A. 90-189, eff. 1-1-98.)

Counsel contends that the statute cited by the district director is completely unrelated to the statute under which the applicant was convicted and that, because she was convicted of only a misdemeanor, the applicant's conviction for false statement in procuring a credit or debit card does not render her inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act. The AAO finds counsel's argument unpersuasive. The AAO finds that paragraph 250-3 of the ILCS was amended in 1998 by Public Act 90-189 as follows:

Sec. 3. A person who makes or causes to be made, either directly or indirectly, any false statement in writing, knowing it to be false and with intent that it be relied on, respecting his identity, his address or his employment, or that of any other person, firm or corporation, for the purpose of procuring the issuance of a credit card or debit card, is guilty of a Class 4 felony ~~A misdemeanor~~. (Source: P.A. 84-486.)

Whether the applicant was convicted of a felony or a misdemeanor has no bearing on whether she has been convicted of a crime involving moral turpitude. The Board of Immigration Appeals (“BIA”) 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.

Neither the seriousness of the criminal offense nor the severity of the sentence imposed is determinative of whether a crime involves moral turpitude. *Matter of Serna*, 20 I&N Dec. 579, 581 (BIA 1992). Before one can be convicted of a crime involving moral turpitude, the statute in question must involve moral turpitude. *Matter of Esfandiary*, 16 I&N Dec. 659 (BIA 1979). Violation of statutes which merely license or regulate and impose criminal liability without regard to evil intent do not involve moral turpitude. *Matter of Serna, Id.* at 583. The AAO finds, therefore, that the applicant’s conviction for false statement to procure a credit or debit card is a violation of a statute that does not involve moral turpitude, but rather a statute which regulates and imposes criminal liability without regard to evil intent.

However, the AAO finds that both the district director and counsel failed to consider the applicant’s conviction for retail theft. Paragraph 720, chapter 5 of the ILCS provides, in pertinent part:

Sec. 16A-3. Offense of Retail Theft. A person commits the offense of retail theft when he or she knowingly:

(a) Takes possession of, carries away, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment with the intention of retaining such merchandise or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the full retail value of such merchandise;

Sec. 16A-10. Sentence.

(1) Retail theft of property, the full retail value of which does not exceed \$150, is a Class A misdemeanor

The AAO notes counsel’s contention that the theft charge against the applicant was dismissed. Records from the Circuit Court of Cook County, Illinois indicate that that applicant was simultaneously charged with false

statement to procure a credit or debit card and theft in violation of paragraph 720, chapter 5/16-1B of the ILCS. On February 23, 1996, the judge removed the theft charge from the docket, reserving the right to reinstate it at a later date. However, the applicant was arrested, charged and pled guilty to retail theft as the result of separate incident that occurred in 2000. The AAO finds, therefore, that the applicant has been convicted a crime involving moral turpitude, retail theft. *Matter of D*, 1 I&N Dec. 143 (BIA 1941). A Class A misdemeanor in Illinois is punishable by any term of imprisonment less than one year. Paragraph 730 ILCS, chapter 5/5-8-3.

In the present case, the applicant was convicted of retail theft. The record indicates that maximum penalty for the applicant's crime was less than one year in jail. The record indicates further that the applicant was fined and conditionally discharged for the period of one year. The evidence in the record thus establishes that the applicant's retail theft conviction falls within the petty offense exception set forth in the Act.

In *Matter of Garcia-Hernandez*, 23 I&N Dec. 590 (BIA 2003), the Board held that a respondent who was convicted of more than one crime, only one of which was a crime involving moral turpitude, was eligible for the petty offense exception provided under section 212(a)(2)(A)(ii) of the Act. The Board reasoned that:

The "only one crime" proviso, taken in context, is subject to two principal interpretations: (1) that it is triggered . . . by the commission of any other crime, including a mere infraction; or (2) that it is triggered only by the commission of another crime involving moral turpitude [W]e construe the "only one crime" proviso as referring to . . . only one crime involving moral turpitude.

Matter of Garcia-Hernandez at 594.

The record reflects that the applicant was convicted of only one crime involving moral turpitude, that the crime qualifies under the petty offense exception to inadmissibility, and that the applicant is not otherwise inadmissible. Accordingly, the AAO finds that the applicant is not inadmissible. She, therefore, does not require a waiver of inadmissibility, so the appeal will be dismissed, the decision of the district director will be withdrawn and the waiver application will be declared moot.

ORDER: The appeal is dismissed, the prior decision of the district director is withdrawn and the application for waiver of inadmissibility is declared moot.