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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

Office: FRANKFURT, GERMANY

Date: OCT 30 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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer-in-Charge (OIC), Frankfurt, Germany, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the waiver application is moot.

The applicant, a citizen of Poland, was found inadmissible to the United States 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), for having been convicted of a crime involving moral turpitude. The applicant is the spouse of a United States citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to enter the United States and join his wife.

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. On appeal, the applicant contends that his wife would suffer extreme hardship if he is required to remain in Poland. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2) of the Act provides, in pertinent part:

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

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

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -

- (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated; or

(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 . . . .

Section 212(h) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, CIS must then assess whether to exercise discretion.

The AAO will first consider whether the applicant is inadmissible; i.e., whether the crime for which he was convicted constitutes a crime involving moral turpitude.

In *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), the BIA stated 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. Assault may or may not involve moral turpitude. Simple assault is generally not considered to be a crime involving moral turpitude.

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.) Referring to *Matter of Perez-Contreras*, *supra*, the BIA stated in *Matter of Fualaau*, 21 I&N Dec. 475, 476 (BIA 1996) that:

In *Perez-Contreras*, we found that assault in the third degree under the relevant state statute did not constitute a crime involving moral turpitude. The statute governing the conviction identified misconduct which simply caused bodily injury, rather than serious bodily injury. Moreover, the misconduct did not involve the use of a weapon.

In the instant case, the applicant was convicted of the violating Article 157, section 2 of the Polish Penal Code on February 17, 2004. The certified English translation of his sentence states, in pertinent part, the following regarding the applicant's crime:

[The applicant was charged with] beating [victim's name withheld] with a stick in the buttocks region several times . . . and as a result of that the injured person sustained the injury of both buttocks which resulted in injuring bodily organ functions for the period of below 7 days. . .

In determining whether the crime under which the applicant was convicted involved moral turpitude, the AAO turns first to the language of the statute itself. Article 157 of the Polish Penal Code of 1997<sup>1</sup> states the following:

§ 1     Whoever causes a bodily injury or an impairment to health other than specified in Article 156 § 1,<sup>2</sup> shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and five years.

<sup>1</sup> See The Academy of European Law, <http://www.era.int/en/html/index.htm> (accessed October 10, 2007).

- § 2 Whoever causes a bodily injury or an impairment to health lasting not longer than 7 days, shall be subject to a fine, the penalty of restriction of liberty[,] or the penalty of deprivation of liberty for up to 2 years.
- § 3 If the perpetrator of the act specified in § 1 or 2 acts unintentionally he shall be subject to a fine, the penalty of restriction of liberty[,] or the penalty of deprivation of liberty for up to one year.
- § 4 The prosecution of the offence specified in § 2 or 3 shall, if the bodily injury of an impairment of health did not exceed 7 days, occur upon a private charge. . . .

As noted previously, the applicant was convicted under section 2, as the victim's injuries to her buttocks lasted less than seven days. The applicant struck the victim with a stick, and not with a deadly weapon such as a knife or a hammer. Pursuant to section 4, the action was only brought forward because the victim privately charged the applicant with the crime; the government would not have been prosecuted otherwise. Moreover, the AAO notes that the only punishment handed down by the court was a fine of 300 Polish zloty, which was equivalent to a fine of \$78.86 in the United States.<sup>3</sup> Finally, the AAO also notes that the section under which the applicant was charged did not cover "grievous bodily harm" or "serious injury," as such injuries are covered by Article 156 of the Polish Penal Code.

As noted previously, simple assault is generally not considered to be a crime involving moral turpitude. *See Matter of Perez-Contreras*. While section 2 of Article 157 does not specifically use the phrase "simple," the AAO finds that, in this case, the applicant's crime is similar to that of a simple battery. It did not result in serious injury, it was not committed with a deadly weapon, and it does not appear as though the applicant had the intent to cause serious bodily harm. Had the victim of the applicant's crime not desired to pursue a private charge, the government would not have deemed the case serious enough to pursue it on its own. That the applicant's only punishment was a fine equivalent to \$78.86 does not indicate that the court considered the applicant's crime to be of a serious nature, either. These factors are not consistent with a finding that the applicant's behavior was inherently base, vile, or depraved, and contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general. Accordingly, the AAO finds that the applicant's crime was not a crime involving moral turpitude. Therefore, the applicant is not inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act.

The AAO finds that the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act and, therefore, the Form I-601 is moot. Having found that the applicant is not in need of the waiver, no purpose would be served in discussing whether his wife has established extreme hardship under section 212(h) of the Act.

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

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<sup>2</sup> The "grievous" bodily injuries specified in section 1 of Article 156 are depriving a person of sight, hearing, speech, or the ability to procreate; or inflicting on another person a serious crippling injury, an incurable or prolonged illness, an illness actually dangerous to life, a permanent mental illness, a permanent total or substantial incapacity to work in an occupation, or a permanent serious bodily disfigurement or deformation.

<sup>3</sup> *See* Currency Converter for 164 Currencies, <http://www.oanda.com/convert.classic> (accessed October 9, 2007).