



U.S. Citizenship
and Immigration
Services

tl2

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

[Redacted]

FILE: [Redacted] Office: CHICAGO, IL Date: **APR 03 2008**

IN RE: Applicant:

[Redacted]

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

ON BEHALF OF PETITIONER:

[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.

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 District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained as the underlying application is moot.

The applicant is a native and citizen of Mexico. The record reflects that he was convicted of Carrying a Handgun without a License by the State of Indiana in 2001. On the basis of this conviction, the applicant was found to be 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 beneficiary of an approved Petition for Alien Relative filed on his behalf by his U.S. citizen spouse. He sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may adjust his status to lawful permanent resident and continue to reside in the United States with his family.

The district director determined that the applicant was inadmissible based on his 2001 conviction. The director further found that the applicant had failed to establish that his U.S. citizen would suffer extreme hardship if the waiver was denied. *Decision of the District Director*, dated January 12, 2005.

On appeal, the applicant, through counsel, contends that he is not inadmissible. *See Brief in Support of Appeal*. In the alternative, the applicant maintains that he is eligible for a waiver of inadmissibility. *Id.*

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.

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

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

- (1) (A) in the case of any immigrant it is established to the satisfaction of the [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

The record contains the applicant's record of conviction, indicating that he was found guilty of Carrying a Handgun without a License and sentenced to 2 days, 363 suspended. The applicant was convicted under section 35-47-2-1 of the Indiana State Criminal Code. This section provides, in relevant part, as follows:

a person shall not carry a handgun in any vehicle or on or about the person's body, except in the person's dwelling, on the person's property or fixed place of business, without a license issued under this chapter being in the person's possession.

The AAO finds that the applicant was not convicted of a crime involving moral turpitude, and is therefore not inadmissible. 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. See *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992); *Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988). 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. *Matter of P-*, 6 I&N Dec. 795 (BIA 1955). "[T]he violation of a regulatory, or licensing, or revenue provision of a statute is not a crime involving moral turpitude." *Matter of Abreu-Semino*, 12 I&N Dec. 775, 776 (BIA 1968). The AAO agrees with the applicant that his conviction under section 35-47-2-1 of the Indiana State Criminal Code does not constitute a conviction for a crime involving moral turpitude.

Having found that the applicant is not inadmissible, the AAO need not address the issue of extreme hardship to the applicant's spouse. It is the applicant's burden to prove that he is not inadmissible under any provision of the Act. See Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden.

ORDER: The appeal is sustained as the applicant is not inadmissible and the waiver application is moot.