

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



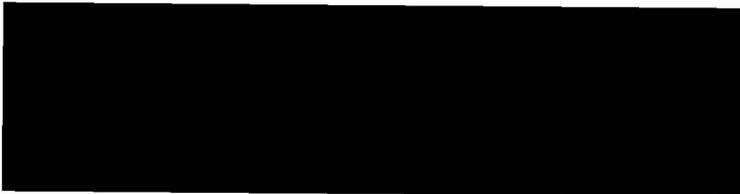
H2

FILE:  Office: MEXICO CITY, MEXICO (SANTO DOMINGO) Date: **JUL 09 2008**

IN RE: 

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 PETITIONER:



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 waiver application was denied by the District Director, Mexico City, Mexico, and the matter is now before the AAO on appeal. The applicant's waiver application will be declared moot and the appeal will be dismissed.

The applicant is a native and citizen of the Dominican Republic who was found to be inadmissible to the United States under section 212(a)(2)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(B), for having been convicted of two or more offenses for which the aggregate sentences to confinement were five years or more. The applicant is the spouse of a U.S. citizen and father of two U.S. Citizen sons. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his wife and sons.

The district director concluded that the applicant was ineligible for a waiver pursuant to section 212(h) of the Act because there is no waiver available for the applicant's conviction for possession of a weapon. The application was denied accordingly. *Decision of the District Director*, dated April 5, 2006.

On appeal, counsel asserts that the applicant is not precluded from applying for a waiver for possession of a firearm as the district director concluded. Counsel relies on *Matter of Rainford*, 20 I&N Dec. 598 (BIA 1992), to support this assertion and maintains that conviction for possession of a firearm is not a ground of inadmissibility. See *Counsel's Letter in Support of the Appeal* at 1. Counsel further asserts that the applicant is eligible for a waiver pursuant to section 212(h) of the Act as well as a waiver for unlawful presence in the United States pursuant to section 212(a)(9)(B)(v) of the Act. *Id.* at 3. Counsel states that the applicant has not been convicted of any crime since 1984, has strong family ties in the United States, and has demonstrated that his admission would not be contrary to the national welfare, safety, or security of the United States. *Id.*

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(a)(2)(B) of the act provides:

(B) Multiple criminal convictions.-Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

The record indicates that the applicant was admitted to the United States as a Lawful Permanent Resident on November 16, 1969. He was convicted on October 17, 1981 of disorderly conduct, promoting gambling in the second degree, and possession of a gambling device, all of which are misdemeanors. He was also convicted on March 1, 1984 of criminal possession of a weapon in the fourth degree, a Class A Misdemeanor. The sentence imposed for both convictions was conditional discharge, a sentence the court may impose rather than imprisonment or probation for certain offenses. *See* New York Penal Law § 65.05 (Sentence of Conditional Discharge). The applicant remained in the United States until November 1995, when he returned to the Dominican Republic. He remained there until April 9, 1997, when he traveled to the United States and was found to be inadmissible because he had abandoned his Lawful Permanent Resident status. *See Notice to Appear* dated April 11, 1997. The applicant was placed in removal proceedings and later permitted to withdraw his application for admission and return voluntarily to the Dominican Republic. *See Order of the Immigration Judge* dated June 10, 1998 and *Form I-275, Withdrawal of Application for Admission*, dated June 11, 1998. The applicant returned to the Dominican Republic on June 13, 1998 to apply for an immigrant visa.

The applicant was never sentenced to imprisonment for any crime, and he is therefore not inadmissible under section 212(a)(2)(B) of the Act. The AAO further notes that although the district director found the applicant to be inadmissible only pursuant to section 212(a)(2)(B) of the Act because of multiple criminal convictions, the decision also refers to section 212(a)(2)(A)(i)(I) of the Act, conviction of a crime involving moral turpitude. A crime involves "moral turpitude" if it 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. *Matter of Olquin*, 23 I&N Dec. 896 (BIA 2006); *Matter of Torres-Varela*, 23 I&N Dec. 78, 83 (BIA 2001); *see also Grageda v. U.S. INS*, 12 F.3d 919, 921 (9th Cir. 1993). The applicant was convicted of knowingly possessing a gambling device and promoting gambling, which entails knowingly advancing or profiting from unlawful gambling activity. The Board of Immigration Appeals (BIA) has held that gambling offenses generally do not involve moral turpitude. *See Matter of G --*, 1 I&N Dec. 59 (BIA 1941). The applicant was also convicted of criminal possession of a weapon in the fourth degree. The BIA has held that carrying or possessing a concealed weapon only involves moral turpitude when the intent to use it against another person has been established. *See Matter of Serna*, 20 I&N Dec. 579 (BIA 1992), *modified on other grounds by Matter of Khourn*, 21 I&N Dec. 1041 (BIA 1997); *Matter of Granados*, 16 I&N Dec. 726 (BIA 1979); *Matter of S-*, 8 I&N Dec. 344 (BIA 1959). The statute the applicant was convicted under, New York Penal Law § 265.01, requires only the knowing possession of a weapon without any intent to use the weapon. Therefore, the AAO finds that neither of the applicant's convictions is for a crime involving moral turpitude.

The district director also refers to section 237(a)(2)(C) of the Act, which provides:

Any alien who *at any time after admission* is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18, United States Code) in violation of any law *is deportable* (emphasis added).

The district director referred to section 212(h) of the Act, which provides a waiver for certain grounds of inadmissibility under section 212(a)(2) of the Act, and then based the denial of the waiver application on the conclusion that there is “no waiver for possession of a weapon.” *Decision of District Director* at 2. A conviction for possession of a firearm or any other type of weapon is not a ground of inadmissibility, and the applicant is therefore not required to apply for a waiver of this offense because it did not render him inadmissible. Section 237(a)(2)(C) is a ground of deportability that applies only to an alien who has been admitted to the United States. Although the applicant was a lawful permanent resident at the time he was convicted of the crime, he lost his permanent resident status in 1997 after being outside the United States for two years. At this time he is outside of the United States seeking an immigrant visa and, as an applicant for admission, is not subject to section 237 of the Act.

The AAO further notes that although counsel refers to a waiver under section 212(a)(9)(B)(v) of the Act, the record does not indicate that the applicant has been found to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act. A review of the record indicates, however, that the applicant was unlawfully present in the United States from April 9, 1997, when he attempted to enter using his permanent resident card after abandoning his residence in the United States, to June 13, 1998, when he voluntarily returned to the Dominican Republic after withdrawing his application for admission. The applicant therefore accrued over one year of unlawful presence, rendering him inadmissible for a period of ten year after his departure from the United States. Since more than ten years have now passed since the applicant departed the United States on June 13, 1998, the applicant is no longer inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

In the present case the record establishes that the applicant’s criminal convictions do not render him inadmissible under section 212(a)(2)(B) or section 212(a)(2)(A)(i)(II) of the Act, and he is no longer inadmissible under section 212(a)(9)(B)(i)(II) of the Act. Accordingly, the AAO finds that the applicant is not required to obtain a waiver of inadmissibility. The applicant’s waiver application is thus moot and the appeal will be dismissed.

**ORDER:** The applicant’s waiver application is declared moot and the appeal is dismissed.