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U.S. Department of Homeland Security  
20 Mass Ave. N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: MIAMI, FL

Date:

**JUL 30 2008**

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, Miami, Florida, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the decision of the district director will be withdrawn and the application declared moot.

The applicant is a native and citizen of Haiti 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 father of a U.S. citizen son. He 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 his son.

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 September 8, 2007.

The record reflects that, on October 22, 2004, the applicant was convicted of trespassing and petit theft in violation of 810.08(1) and 812.014(a) and (3)(a) of the Florida Statutes (FS). The applicant was sentenced to time served. On November 15, 2004, the applicant was convicted of petit theft in violation of 812.014(1) and (3)(a) of the FS. The applicant was sentenced to restitution.

On August 15, 2005, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his son.

On appeal, counsel contends that the applicant has established that his son would suffer extreme hardship. See *Counsel's Memorandum*, dated October 3, 2007. In support of the appeal, counsel submits the referenced memorandum and copies of 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 convictions for petit theft. On appeal, counsel does not contest the district director's finding of inadmissibility. However, the AAO finds that the applicant's convictions for petit theft do not render him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The AAO notes that the applicant provided the full record of conviction for each charge including the information, plea, judgment and sentencing. Chapter 812.014 of the FS provides:

- (1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:
  - (a) Deprive the other person of a right to the property or a benefit from the property
  - (b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property

....

- (3) (a) Theft of any property not specified in subsection (2) is petit theft of the second degree and a misdemeanor of the second degree .

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. In *Matter of D*, 1 I&N Dec. 143 (BIA 1941), the BIA held that while those theft crimes that include the deprivation of possession from the owner for a temporary period without intent to steal are not crimes involving moral turpitude, those cases which would by their nature necessarily constitute theft or stealing as those offenses are known in common law, are crimes involving moral turpitude.

As discussed by the Eleventh Circuit Court of Appeals (Eleventh Circuit), the circuit under which the applicant's case arises, Chapter 812.014(1) of the FS is a divisible statute under which "appropriation" or "exercise of control over property; a taking of possession," would not necessarily entail that the property owner be deprived of his or her rights to the property's use or benefits. *See Jaggernaut v. U.S. Attorney General*, 432 F. 3d 1346 at 1354-55 (11<sup>th</sup> Cir. 2005). The record of conviction in the applicant's case does not provide clear, unequivocal and convincing evidence that the applicant's petit theft convictions were for a taking with the intent to deprive another of their rights or benefits of the property or that the applicant's offense is one that constitutes a "theft." The AAO finds, therefore, that the applicant's convictions for petit theft are violations of a statute that does not involve moral turpitude.

As the record does not indicate that the applicant has been convicted of any crime involving moral turpitude, he is not inadmissible to the United States and is not required to file the Form I-601.<sup>1</sup> Accordingly, 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.

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<sup>1</sup> The AAO notes that the applicant was previously granted a waiver of his medical inadmissibility under section 212(a)(1)(A)(I) of the Act. *See the I-607 waiver form*, dated September 8, 2007.