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

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **NOV 28 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.


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying application is moot. The matter will be returned to the director for continued processing.

The applicant is a native and citizen of Cuba 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 a crime involving moral turpitude. The applicant 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.

The director concluded that the applicant 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 Director*, dated May 12, 2006.

On appeal, counsel for the applicant contends that the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act, as he has not committed a crime involving moral turpitude. *Brief from Counsel*, dated June 1, 2006. Thus, counsel asserts that the applicant does not require a waiver of inadmissibility. *Id.*

The record contains briefs from counsel; documentation relating to the applicant's entry to the United States; documentation regarding the applicant's criminal convictions; tax documents for the applicant; a letter from the applicant's employer; a statement from the applicant; statements from the applicant's parents; a copy of the applicant's mother's Form I-551 permanent resident card; a copy of the applicant's father's naturalization certificate; a birth record for the applicant; a statement from the applicant's sister; a copy of the naturalization certificate for the applicant's sister, and; a report on conditions in Cuba. The entire record was reviewed and considered in rendering this decision.

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

- (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, that:

The Attorney General [now Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) [or] (B) . . . 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 [now the Secretary of Homeland Security (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 reflects that the applicant pled guilty to a charge of Grand Theft – Principal in the First Degree under Florida Statute § 812.014 before the Circuit Court for the 16th Judicial Circuit of Florida. Although the court declined to adjudge the applicant guilty, it gave the applicant a sentence of 24 months probation on August 15, 1994. As noted by the director, the Board of Immigration Appeals held that withholding adjudication of guilt in Florida constitutes a conviction for purposes of determining inadmissibility under the Act if certain conditions are met. *See Matter of Ozkok*, 19 I&N Dec. 546 (BIA 1988). Specifically, in the present matter: (1) the applicant entered a plea of guilty, (2) the judge has ordered some form of punishment, penalty, or restraint on the applicant's liberty to be imposed, and (3) a judgment or adjudication of guilt may be entered if the applicant violates the terms of his probation or fails to comply with the requirements of the court's order, without availability of further proceedings regarding his guilt or innocence of the original charge. *Id.* at 547.

However, on appeal counsel contends that the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act, as he has not committed a crime involving moral turpitude. *Brief from Counsel* at 3-6. Specifically, counsel asserts that the Florida statute under which the applicant was charged is divisible, as it provides for culpability for theft whether the perpetrator intended to take property permanently or temporarily. *Id.* at 3-4. Counsel contends that temporarily taking property is not a crime involving moral turpitude. *Id.* at 5 (citing *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973); *Matter of P*, 2 I&N Dec. 887 (BIA 1947); *Matter of D*, 1 I&N Dec. 143 (BIA 1941)). Counsel asserts that, because the record of the applicant's conviction does not show whether the applicant committed a temporary or permanent taking, he cannot be properly found inadmissible for having committed a crime involving moral turpitude. *Id.* at 5-6.

Upon review, the AAO finds that the record does not establish that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. There is ample precedent to show that a taking of property for a temporary period is not a crime involving moral turpitude. *See Matter of M-*, 2 I&N Dec. 686 (BIA 1946); *Matter of Grazley* at 333. As correctly observed by counsel, where a theft statute provides for culpability whether a taking was temporary or permanent, a conviction under such provision does not immediately give rise to inadmissibility. *Matter of Grazley* at 333. The Board of Immigration Appeals has found that, where a conviction is based on such a divisible theft statute, "it is permissible to look beyond the statute to consider such facts as may appear from the record of conviction to determine whether the conviction was rendered under the portion of the statute dealing with crimes that do involve moral turpitude." *Id.*

In the present matter, the applicant pled guilty to a charge of Grand Theft – Principal in the First Degree under Florida Statute § 812.014. Florida Statute § 812.014 criminalizes the taking of property with the intent to “either temporarily or permanently” deprive the owner of the property. Florida Statute § 812.014. In the charging document, the court indicated that the applicant obtained the property of another “with the intent to either temporarily or permanently” deprive the owner of its use. *Charging Document*, dated June 7, 1994. The court order placing the applicant on probation for 24 months did not discuss the applicant’s criminal conduct, or otherwise specify whether the applicant was found to have had an intent to temporarily or permanently deprive the owner of the property he obtained. *Court Order*, August 15, 1994. Accordingly, the official record of the applicant’s conduct and sentencing does not support that the court found that he intended to permanently deprive the owner of the property he obtained. Therefore, the record does not show by a preponderance of the evidence that the applicant’s conduct constituted a crime involving moral turpitude. *See Matter of M-*, 2 I&N Dec. 686 (BIA 1946); *Matter of Grazley* at 333. Based on the foregoing, the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act for culpability under Florida Statute § 812.014.

The applicant has not been convicted of other offenses that may serve as a basis for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. The record does not show that the applicant is inadmissible under other provisions of the Act. Therefore, the applicant does not require a waiver of inadmissibility, and the present Form I-601 application is moot. The appeal will be dismissed.

ORDER: The appeal is dismissed as the underlying waiver application is moot. The director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.