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U.S. Citizenship
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FILE:

Office: NEW YORK, NY

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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 APPLICANT:



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, New York, New York, and is now before the AAO on appeal. The appeal will be dismissed, the previous decision of the district director will be withdrawn and the application declared moot.

The applicant, a native and citizen of Ecuador, 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 and under section 212(a)(2)(D)(i) of the Act, 8 U.S.C. § 1182(a)(2)(D)(i), for prostitution related activity. The applicant sought 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 lawful permanent resident parents and U.S. citizen child.

The district director concluded that 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 March 21, 2007.

In support of the appeal, counsel for the applicant submits the following, inter alia: a brief, dated April 20, 2007; an affidavit from the applicant's lawful permanent resident mother, dated April 18, 2007; an affidavit from the applicant's lawful permanent resident father, dated April 18, 2008; a Psychoemotional and Family Dynamics Assessment, dated April 6, 2007; a letter from the applicant's mother's physician, dated April 19, 2007; and medical prescription reports relating to the applicant's mother and father. 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.

(D) Any alien who—

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status . . . is inadmissible.

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

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

- (1) (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 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 indicates that in May 2000, the applicant was convicted for Maintaining a Nuisance, a violation of section 2C:33-12(b) of The New Jersey Code of Criminal Justice, based on a September 1996 arrest. He was ordered to pay a fine. No prison sentence was imposed.

The AAO must first analyze whether the applicant's conviction for maintaining a nuisance constitutes a crime involving moral turpitude under section 212(A)(i)(I) of the Act. In examining whether a crime involves moral turpitude, the Board of Immigration Appeals [the Board] 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. 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.)

With respect to the applicant's conviction for maintaining a nuisance, in order to determine whether this constitutes a crime involving moral turpitude, the AAO must examine the statute itself to determine whether the inherent nature of the crime involves moral turpitude. If the statute defines a crime in which moral turpitude necessarily inheres, then the conviction is for a crime involving moral turpitude for immigration purposes, and our analysis ends.

Section 2C:33-12(b) of The New Jersey Code of Criminal Justice states, in pertinent part:

A person is guilty of maintaining a nuisance when:

- c. He knowingly conducts or maintains any premises, place or resort where persons gather for purposes of engaging in unlawful conduct....

A person is guilty of a disorderly persons offense if the person is convicted under subsection a. or b. of this section.

The AAO finds that the Board's decision in *Matter of P*, 2 I. & N. Dec. 117 (BIA 1944) is relevant to this analysis. In *Matter of P*, the Board stated that one of the criteria adopted to ascertain whether a particular crime involves moral turpitude is that it be accompanied by a vicious motive or corrupt mind. "It is in the intent that moral turpitude inheres." *Id.* at 121. In this case, the intent required to be convicted of maintaining a nuisance is knowingly conducting or maintaining a premise where persons gather for purposes of engaging in unlawful conduct. The statute does not outline a requirement that the act of maintaining a nuisance show a vicious motive or a corrupt mind, as referenced in *Matter of P*. As such, the AAO concludes that the district director erred in concluding that the applicant's conviction for maintaining a nuisance resulted in an inadmissibility finding under section 212(a)(2)(A)(i)(I) of the Act.

The AAO must next analyze whether the applicant's conviction makes the applicant inadmissible under section 212(a)(2)(D)(i) of the Act, for prostitution-related activity. The record indicates that the applicant has been convicted of only one crime, Maintaining a Nuisance, as discussed in detail above.¹ Although the complaint/warrant issued for the applicant in September 1996 referenced section 2C:33-12c of The New Jersey Code of Criminal Justice², which references prostitution, it was later amended to reflect a charge against the applicant under section 2C:33-12(b), as outlined above, of which he was ultimately convicted. Section 2C:33-12(b) of The New Jersey Code of Criminal Justice makes no reference to prostitution-related activity. As such, the record fails to establish that the applicant has been convicted of any prostitution-related offenses and/or the record fails to indicate that the applicant came to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution, as required under section 212(a)(2)(D)(i) of the Act. He is thus not inadmissible for prostitution-related activity under section 212(a)(2)(D)(i) of the Act.³

¹ The District Director, in her Decision, erroneously states that "...on September 18, 1996 you were arrested in the State of New Jersey, and were charged with the crime of promoting prostitution, in that: You owned, controlled, managed, supervised, or otherwise kept, alone or in association with another, a house of prostitution or prostitution business. On May 17, 2000, you were found guilty and were fined...." See *Decision of the District Director*, dated March 21, 2007. The record indicates that although the applicant was initially charged with promoting prostitution, the charges were subsequently amended and ultimately dismissed in May 2000.

² Section 2C:33-12(c) of The New Jersey Code of Criminal Justice states, in pertinent part:

A person is guilty of maintaining a nuisance when:

- c. knowingly conducts or maintains any premises, place or resort as a house of prostitution or as a place where obscene material, as defined in N.J.S. 2C:34-2 and N.J.S. 2C:34-3, is sold, photographed, manufactured, exhibited or otherwise prepared or shown.

³ An application for admission or adjustment is a "continuing" application, adjudicated on the basis of the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). There has been no final decision made on the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status. The applicant, as

The applicant's nuisance/disorderly person offense is not a crime of moral turpitude, and the record fails to establish that the applicant has been involved and/or convicted of any prostitution-related activity. The AAO thus finds that the district director erred in determining that the applicant was inadmissible under sections 212(a)(2)(A)(i)(I) and 212(a)(2)(D)(i) of the Act. As such, the waiver application is unnecessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(h) of the Act is moot and need not be addressed. Accordingly, the appeal will be dismissed, the prior decision of the district director is withdrawn and the instant application for a waiver is declared moot.

ORDER: The appeal is dismissed, the prior decision of the district director is withdrawn and the instant application for a waiver is declared moot.

of today, is still seeking admission by virtue of adjustment of status. Thus, even if the AAO were to conclude that the applicant's actions which led to a nuisance conviction related to prostitution, the AAO notes that it has now been more than ten years since the arrest for such actions, in September 1996. As such, a clear reading of the law reveals that the applicant would no longer be inadmissible under section 212(a)(2)(D)(i) of the Act.