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U.S. Citizenship  
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FILE:



Office: VIENNA, AUSTRIA

Date:

SEP 16 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 APPLICANT:

SELF-REPRESENTED

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 Acting Officer in Charge, Vienna, Austria and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the acting officer in charge will be withdrawn and the application declared moot.

The applicant is a native and citizen of Poland who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I) for having been convicted of a crime involving moral turpitude.<sup>1</sup> The applicant has a lawful permanent resident father; he seeks a waiver of inadmissibility in order to reside with his father in the United States.

The acting officer in charge 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 Excludability (Form I-601) accordingly. *Decision of the Acting Officer in Charge*, dated November 28, 2005.

On appeal, the applicant submitted the Form I-290B, Notice of Appeal, and a statement. As the applicant asserts,

...My father wants me to come to him as he misses me. He wants to get to know me finally. We have not seen each other for a long time (18 years). He would like to recompence [sic] me for all these years when we were apart. It is not his fault that I acted stupidly when I was 17. I have changed since then I want him to see it.... I am his only son. He hoped that I would stay by his side when he needs me. His health worsened when he had learned about your refusal....

*Form I-290B.* 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(a)(2)(A)(ii) of the Act states in pertinent part, that:

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

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<sup>1</sup> Court documents indicate that the applicant, on May 1, 2002, "...acting jointly and in conspiracy with juveniles, burgled a railway carriage, by cutting the padlock, getting inside and appropriating a welder, electrical plug-in socket, transformer, plastic elements with metal clip hook, bench grinder, welding cables and electrical wires and other things.... condemned to imprisonment of 1(one) year and 2(two) months.... Implementation of the punishment of imprisonment is conditionally suspended for a probation...for a period of 4(four) years shall be supervised by a probation officer.... ” *Translation regarding Court File No. 2420/02*, dated November 28, 2002.

....

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States...

In the present case, the applicant was 17 years old at the time he committed the above-referenced act of burglary. As the incident occurred more than five years ago, in May 2002, and no confinement to a prison or correctional institution was imposed on the applicant, the evidence in the record establishes that the applicant falls within the above-referenced exception set forth in the Act.

Thus, the AAO finds that the applicant is not subject to section 212(a)(2)(A)(i)(I) of Act. As such, the waiver application is unnecessary and the issue of whether the applicant established exceptional hardship to a qualifying relative pursuant to section 212(h) of the Act is moot and will not be addressed. Accordingly, the appeal will be dismissed, the prior decision of the acting officer in charge is withdrawn and the instant application for a waiver is declared moot.

**ORDER:** The appeal is dismissed, the prior decision of the acting officer in charge is withdrawn and the instant application for a waiver is declared moot.