

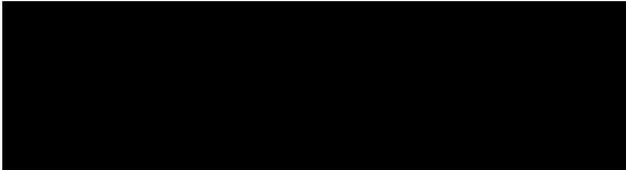
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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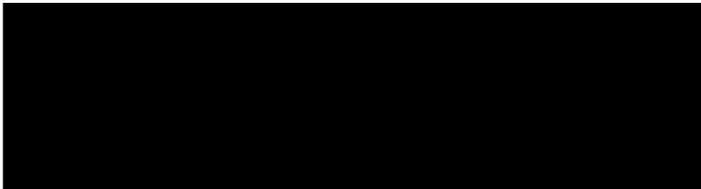
IN RE:



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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the district director will be withdrawn and the application declared moot. The matter will be returned to the district director for continued processing.

The applicant is a native and citizen of the Philippines 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 crimes involving moral turpitude. The applicant has a lawful permanent resident mother and a U.S. citizen step-father; he seeks a waiver of inadmissibility in order to reside with his family in the United States.

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 February 27, 2003.

On appeal, counsel for the applicant submitted the Form I-290B, Notice of Appeal, and a corresponding attachment. 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 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 September 2001, by authority of the Juvenile Court Act of the Illinois Compiled Statutes, the applicant was placed on probation for having committed the offenses of Aggravated Assault and Assault Battery, based on two separate incidents that occurred in May 2001.

See Letter from [REDACTED] Probation Officer II and Probation Order, dated September 18, 2001.

In its decision, *In re Miguel Devison-Charles*, 22 I&N Dec. 1362 (BIA 2000), the Board of Immigration Appeals (Board) stated, “[w]e have consistently held that juvenile delinquency proceedings are not criminal proceedings, that acts of juvenile delinquency are not crimes, and that findings of juvenile delinquency are not convictions for immigration purposes.... juvenile delinquency adjudications are not criminal proceedings, but are adjudications that are civil in nature, wherein the applicable due process standard is fundamental fairness....” *Devison-Charles* at 1365-1366; see also *Matter of De La Nues*, 18 I&N Dec. 140 (BIA 1981) and *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981).

The record shows that at the time of the above-referenced incidents, the applicant was 15 years old. Section 5-130 of the Juvenile Court Act of 1987 states, in pertinent part:

(1)(a) The definition of delinquent minor...shall not apply to any minor who at the time of an offense was at least 15 years of age and who is charged with: (i) first degree murder, (ii) aggravated criminal sexual assault, (iii) aggravated battery with a firearm where the minor personally discharged a firearm as defined in Section 2-15.5 of the Criminal Code of 1961, (iv) armed robbery when the armed robbery was committed with a firearm, or (v) aggravated vehicular hijacking when the hijacking was committed with a firearm.

These charges and all other charges arising out of the same incident shall be prosecuted under the criminal laws of this State.

The AAO notes that the applicant was not charged with any of the offenses outlined in section 5-130 of the Juvenile Court Act of 1987. Thus, due to his age and the nature of the incidents, he was placed in juvenile proceedings and was determined to be a delinquent minor; his offenses were acts of juvenile delinquency, not crimes.¹

The record establishes that the applicant was found to have committed acts of juvenile delinquency, not crimes. Moreover, pursuant to *Devison-Charles*, the applicant was never “convicted” for immigration purposes. Thus, the AAO finds that the district director erred in determining that the applicant was 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 extreme 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 district director is withdrawn and the instant application for a waiver is declared moot.

¹ As a result of his actions, the record establishes that the applicant received community service, counseling and supervision by a probation officer.

ORDER: The appeal is dismissed, the prior decision of the district director is withdrawn and the instant application for a waiver is declared moot. The district director shall continue to process the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, accordingly.