



U.S. Citizenship  
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[Redacted]

FILE:

[Redacted]

Office: BALTIMORE, MARYLAND

Date:

**MAR 06 2009**

IN RE: Applicant:

[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 District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The District Director's decision will be withdrawn and the appeal will be dismissed as moot.

The applicant is a native and citizen of Peru who was found to be 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. The record indicates that the applicant is married to a United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 her United States citizen spouse and children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on her spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated March 27, 2006.

On appeal, the applicant, through counsel, asserts that the applicant's husband would face extreme hardship if the applicant is removed from the United States. *Form I-290B*, filed April 26, 2006.

The record includes, but is not limited to, counsel's brief, a declaration from the applicant, psychological evaluations on the applicant's husband, a letter from [REDACTED] regarding the applicant's husband's medical conditions, and the court disposition for the applicant's theft conviction. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on May 7, 1996, the applicant was convicted of petty larceny, placed in an advocate program, and ordered to pay court costs and fees.

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

(A) *Conviction of certain crimes.*—

- (i) In general.—Except as provided in clause (ii), any 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...
- (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 for 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, that:

Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in his discretion, waive the application of subparagraphs (A)(i)(I)...of subsection (a)(2) if—

(1) (A) in the case of any immigrant it is established to the satisfaction of the [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 established to the satisfaction of the [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...

(2) the [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien’s applying or reapplying for a visa, for admission to the United States, or adjustment of status.

In the present application, the record indicates that on May 4, 1996, while the applicant was present in the United States on a B-2 nonimmigrant visa, she was arrested for petit larceny. On May 7, 1996, the applicant was convicted of petty larceny, placed in an advocate program, and ordered to pay court costs and fees. On an unknown date, the applicant departed the United States. On September 14, 2002, the applicant entered the United States on a B-2 nonimmigrant visa with authorization to remain in the United

States until March 23, 2003. On November 4, 2002, the applicant's United States citizen husband filed a Petition for Alien Fiancé(e) (Form I-129F) and a Form I-130 on behalf of the applicant. On March 28, 2003, the applicant's Form I-129F was approved. On July 29, 2003, the applicant's criminal case was closed. On an unknown date, the applicant departed the United States. On September 3, 2003, the applicant entered the United States on a K-3 nonimmigrant visa. On January 2, 2004, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On March 4, 2004, the applicant's Form I-130 was approved. On May 18, 2005, the applicant filed a Form I-601. On March 27, 2006, the District Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relative.

The AAO notes that robbery and theft offenses are considered crimes involving moral turpitude. *See Matter of Carballe*, 19 I&N Dec. 357 (BIA 1986); *see also Matter of Martin*, 18 I&N Dec. 226 (BIA 1982); *Matter of Garcia*, 11 I&N Dec. 521 (BIA 1966); *Chen v. INS*, 87 F.3d 5 (1st Cir. 1996). However, the AAO finds that the applicant's petty larceny conviction falls under the petty offense exception in the Act. *See* section 212(a)(2)(A)(ii)(II) of the Act.

Section 812.014 of the Florida Statutes states:

(e)...if the property stolen is valued at \$100 or more, but less than \$300, the offender commits petit theft of the first degree, punishable as a misdemeanor of the first degree...

The AAO notes that the penalty for misdemeanor in the first degree in the 1997 Florida Statutes was for a term of imprisonment not to exceed one (1) year. For the applicant's petty larceny conviction, the record indicates that she was placed in an advocate program, and ordered to pay court costs and fees. Therefore, the applicant's conviction under Florida Statutes § 812.014 falls within the petty offense exception set forth in section 212(a)(2)(A)(ii)(II) of the Act.

In *Matter of Garcia-Hernandez*, 23 I&N Dec. 590 (BIA 2003), the Board of Immigration Appeals (Board) held that a respondent who was convicted of more than one crime, only one of which was a crime involving moral turpitude, was eligible for the petty offense exception provided for under section 212(a)(2)(A)(ii) of the Act. The Board reasoned that:

The "only one crime" proviso, taken in context, is subject to two principal interpretations: (1) that it is triggered...by the commission of any other crime, including a mere infraction; or (2) that it is triggered only by the commission of another crime involving moral turpitude.... [W]e construe the "only one crime" proviso as referring to...only one crime involving moral turpitude.

*Matter of Garcia-Hernandez* at 594.

In the present case, a review of the record establishes that the applicant was convicted of only one crime involving moral turpitude, that the crime qualifies under the petty offense exception to inadmissibility, and that the applicant is not otherwise inadmissible. Accordingly, the AAO finds that the applicant is not

inadmissible. As such, the waiver application is moot 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.

**ORDER:** The appeal is dismissed, the District Director's decision is withdrawn as it has not been established that the applicant is inadmissible, and the waiver application declared moot. The matter is returned to the District Director to reopen and continue processing of the applicant's I-485 application.