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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

tlz

FILE: [REDACTED]

Office: SAN JUAN

Date:

SEP 21 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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Juan, Puerto Rico, 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 The appeal will be dismissed, the previous decision of the district director will be withdrawn and the application declared moot.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 record reflects that the applicant, a native and citizen of Peru, was convicted, in March 2000, of Criminal Possession of a Forged Instrument in the Third Degree, a violation of section 170.20 of the New York Penal Law, based on a February 2000 arrest.¹ The applicant was placed on probation for three years; no prison sentence was imposed. Based on this conviction, the district director concluded that the applicant was 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 applicant does not contest this finding of inadmissibility. Rather, the applicant is seeking 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 U.S. citizen spouse and lawful permanent resident parent.

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 August 25, 2006.

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

- (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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

¹ Section 170.20 of the New York Penal Law states:

A person is guilty of criminal possession of a forged instrument in the third degree when, with knowledge that it is forged and with intent to defraud, deceive or injure another, he utters or possesses a forged instrument.

Criminal possession of a forged instrument in the third degree is a class A misdemeanor.

Section 70.15 of the New York Penal Law states, in pertinent part:

Class A misdemeanor. A sentence of imprisonment for a class A misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed one year....

(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 of 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).

The AAO has reviewed the statute and other documents related to the above-referenced conviction. The AAO concludes that the applicant is not inadmissible. The crime for which the applicant was convicted falls within the petty offense exception of INA § 212(a)(2)(A)(ii)(II), as the maximum penalty possible for said offense, a Class A misdemeanor, does not exceed imprisonment for one year, and the applicant was not sentenced to a term of imprisonment in excess of 6 months.

The AAO concludes that the applicant was convicted of only one crime, that the crime qualifies under the petty offense exception to inadmissibility, and that the applicant is not otherwise inadmissible. As such, the waiver application is unnecessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to 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.

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 reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.