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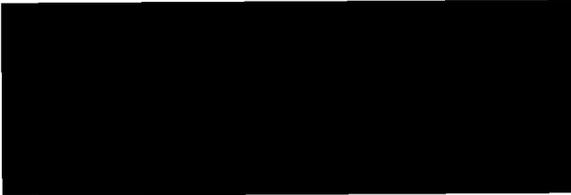
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
Washington, DC 20529-2090



U.S. Citizenship  
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FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date:

JUL 09 2010

IN RE: [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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City (Ciudad Juarez), Mexico and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying application is now moot. The matter will be returned to the district director for continued processing.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to 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 committed a crime involving moral turpitude. The applicant seeks 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 child.

In a decision dated December 4, 2007, the district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and child as a result of his inadmissibility and did not warrant the favorable exercise of the Secretary's discretion. The application was denied accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated January 7, 2008, the applicant's spouse states that her daughter was operated on for blindness in her left eye and that she now receives disability payments each month. She also states that she is suffering from depression and has enrolled in the Mental Health and Mental Retardation Center in Del Rio, Texas. She states further that she currently receives public housing and food stamps and that she needs the applicant to help her care for their daughter and to support the family.

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

(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.

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

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

(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 record indicates that on or about November 5, 1999 the applicant was convicted of Aggravated Robbery in Mexico. The applicant served a sentence of three years, seven months, and fifteen day imprisonment. He was released from prison on December 7, 2003. The applicant, born on January 17, 1983 was sixteen years old at the time of his conviction, thus making him under the age of eighteen at the time his crime was committed.

The AAO notes that robbery is clearly within the category of crimes involving moral turpitude in that committing the elements of robbery the force or threatened force against the person of the victim and the intent to deprive him of his property unlawfully both supply the element of "evil intent." *Matter of Martin*, 18 I. & N. Dec. 226 (BIA 1982) (Colorado law); *Matter of Carballe*, 19 I. & N. Dec. 357 (BIA 1986) (Florida Statute); *Ashby v. INS*, 961 F.2d 555 (5th Cir. 1992); *Matter of Burbano*, Int. Dec. 3229 (BIA 1994). Therefore, the applicant was convicted of a crime involving moral turpitude.

However, the applicant's conviction falls within the juvenile exception under 212(a)(2)(A)(ii)(I) of the Act. The record shows that the applicant was under the age of eighteen at the time the crime was committed. In addition, the applicant committed the crime and was released from confinement more than five years before the date of his application for a visa. The AAO notes that an application for admission or adjustment is a "continuing" application adjudicated based on the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992).

Accordingly, the applicant is not inadmissible as a result of his conviction and the district director's findings regarding this conviction are withdrawn. The applicant's waiver of inadmissibility application is thus moot and the appeal will be dismissed.

**ORDER:** The applicant's waiver application is declared moot and the appeal is dismissed. The matter will be returned to the district director for continued processing.