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



U.S. Citizenship  
and Immigration  
Services

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H2

FILE: [REDACTED] Office: VIENNA

Date:

IN RE: [REDACTED]

JUL 15 2010

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.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer-in-Charge, Vienna. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be granted and the previous decision of the AAO overturned as the underlying application is moot. The matter will be returned to the field office director for continued processing.

The applicant is a native of Kosovo and [REDACTED] 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 been convicted of 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 enter the United States and reside with his U.S. citizen wife.

In a decision dated December 6, 2006, the field office director found the applicant inadmissible for being convicted in Kosovo of beating another man with a tire wrench. The field office director also 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.

In a statement on appeal, dated February 1, 2007, the applicant asserted that his wife was experiencing hardship due to his absence from the United States. On appeal the applicant submitted additional documentation of hardship, but did not contest his inadmissibility.

In a decision dated July 27, 2009, the AAO found that the applicant was inadmissible for having been convicted of a crime involving moral turpitude and did not qualify for the petty offense exception as the maximum term of imprisonment for the applicant's conviction was five years. The AAO also found that the applicant had failed to show extreme hardship to his U.S. citizen spouse as a result of his inadmissibility. The appeal was dismissed accordingly.

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 March 9, 2005 the applicant was convicted in a Municipal Court for Minor Offenses in Kosovo under Article 18, paragraph 1, subsection 5, for beating another man on the arm and face with a tire wrench on March 21, 2004. The applicant was assessed a fine in lieu of imprisonment.

The AAO notes that in *Matter of O-*, 3 I&N Dec. 193 (BIA 1948) and *Matter of Montenegro*, 20 I&N Dec. 603 (BIA 1992), the Board of Immigration Appeals (BIA) held that assault with a weapon is a crime involving moral turpitude. It is noted that as a general rule, simple assault or battery is not deemed to involve moral turpitude for purposes of the immigration laws. *Matter of Fualaau*, 21 I&N Dec. 475, 477 (BIA 1996). However, this general rule does not apply where an assault or battery necessarily involved some aggravating dimension, such as the use of a deadly weapon.... See, e.g., *Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988). Thus, the applicant's conviction was for a crime involving moral turpitude.

In a motion to reconsider, dated August 25, 2009, counsel does not contest the finding that the applicant's conviction is for a crime involving moral turpitude, but asserts that the applicant's conviction qualifies for the petty offense exception. Counsel states that the applicant was convicted under Kosovo's Law on Public Peace and Order under Article 18, paragraph 1, subsection 5 which states that the maximum term of imprisonment for a conviction under this paragraph is two months.

In support of this assertion counsel submits a certified translation of the judgment against the applicant showing that he was convicted under Article 18, paragraph 1, subsection 5 of Kosovo's Law on Public Peace and Order, and a copy of Kosovo's Law on Public Peace and Order in English showing that a conviction under Article 18, paragraph 1 carries a maximum sentence of two months imprisonment.

The AAO notes that the information submitted by counsel has been verified by the U.S. Embassy in Macedonia to be correct. The record indicates that the initial interpretation of the applicant's conviction was a judgment under Article 18, paragraph 1, subsection 5 of the criminal code, which carried a maximum sentence of five years. That determination was erroneous. The maximum sentence to which the applicant could have been sentenced was two months.

Thus, counsel has established that the applicant's conviction qualifies under the petty offense exception to inadmissibility. Accordingly, the applicant is not inadmissible as a result of his conviction and all findings regarding this conviction are withdrawn. The applicant's waiver of inadmissibility application is thus moot, the applicant's motion is granted, and the previous decision of the AAO is overturned.

**ORDER:** The applicant's waiver application is declared moot, the motion is granted, and the previous decision of the AAO is overturned. The matter will be returned to the field office director for continued processing.