

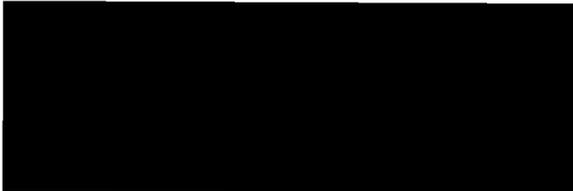
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

**PUBLIC COPY**



#2

FILE:



Office: BALTIMORE, MD

Date:

MAY 05 2010

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the  
Immigration and Nationality Act, 8 U.S.C. section 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.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Baltimore, Maryland. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying waiver application is moot. The District Director shall reopen the applicant's adjustment application for continued processing.

The applicant is a native and citizen of Zambia. He was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I) for having been convicted of a Crime Involving Moral Turpitude (CIMT). The applicant is the spouse of a U.S. citizen and has one United States citizen child. 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.

The District Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on December 4, 2007.

On appeal, counsel for the applicant asserts that the applicant is not inadmissible because he was part of a diversion program and was thus not convicted of a crime as defined by section 101(a)(48)(A) of the Act. Counsel also asserts that the record establishes that a qualifying relative would experience extreme hardship due to the applicant's exclusion.

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 (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:

- (h) 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 2004, the applicant was charged with Theft, less than \$500, in Montgomery County, Maryland. An examination of the record reveals that the official disposition of the charge was *Nolle Prosequi*, meaning that the state declined to prosecute the charge. As such, counsel is correct in asserting that the applicant does not have a conviction as that term is defined by

§ 101(a)(48)(A) of the Act and is, therefore, not inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a CIMT.

Based on the current facts, the applicant does not require a waiver of inadmissibility and the appeal will be dismissed as the waiver application is moot.

**ORDER:** The appeal is dismissed as the underlying waiver application is moot. The District Director shall reopen the applicant's adjustment application for continued processing.