

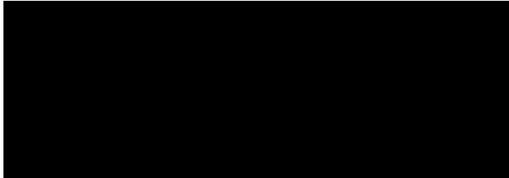
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



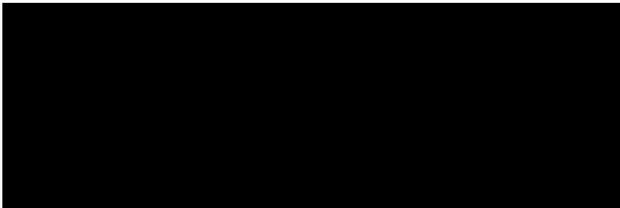
H2

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAY 06 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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Yugoslavia 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 wife and children.

In a decision dated September 8, 2006, the director found the applicant inadmissible for having been convicted of "criminal attempted theft by deception." The director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly.

In an appeal's brief dated November 2, 2006, counsel states that the applicant was not convicted of a felony. Counsel states that the applicant was arrested and charged with a violation of New Jersey Criminal Code 2C:21-17(1), "Impersonation, Theft Identity", but was not convicted of this charge. Counsel states that the court disposition clearly shows that the applicant's arrest charge was amended and the applicant was convicted of violating Atlantic City Code, Ordinance No. 57-1991 for disorderly conduct. Counsel further states that if the applicant's conviction for disorderly conduct was a crime involving moral turpitude then it would fall within the petty offense exception.

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 shows that the applicant was arrested in Atlantic City, New Jersey on August 28, 1996 and charged with Impersonation, Theft of Identity under New Jersey Criminal Code section 2C: 21-17(1). On September 16, 1996 the applicant pled not guilty to the charge. On October 10, 1996 the charge was amended and the applicant was convicted under Atlantic City Ordinance 57-1991 for disorderly conduct. The AAO finds that a violation of a city ordinance for disorderly conduct is not a crime involving moral turpitude.

Accordingly, the applicant is not inadmissible as a result of his conviction and the 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 director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.