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U. S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: LOS ANGELES

Date: APR 20 2011

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:

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 Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application will be approved.

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 crimes 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 her U.S. citizen children.

The Field Office Director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on her qualifying relatives, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 16, 2008.

On appeal, the applicant asserts that her family members would suffer extreme hardship if she is removed from the United States. *Notice of Appeal (Form I-290B)*, dated July 10, 2008.

In support of the application, the record contains, but is not limited to: the applicant's conviction records; statements from the applicant's children and mother; copies of the applicant's children's birth certificates; a copy of the applicant's birth certificate; a copy of the applicant's mother's Resident Alien Card; financial documentation; and medical documentation for the applicant's youngest child. The entire record was reviewed and considered in arriving at a decision on the appeal.

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 Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The record shows that the applicant was convicted in the Municipal Court of Los Angeles, Van Nuys Judicial District, on January 18, 1978, of theft of property in violation of Cal. Penal Code § 484(a) (Case Number 720144). The sentencing for this offense is not contained in the record. On March 5, 1992, the applicant was convicted in the Municipal Court of Los Angeles, Van Nuys Judicial District, of theft of property in violation of Cal. Penal Code § 484(a), and sentenced to 24 months summary probation under the terms that she serves one day in Los Angeles County jail and performs ten days of community service (Case Number 92F01229). The record further shows that on July 12, 1994, the applicant was convicted in the Municipal Court of Los Angeles, Van Nuys Judicial District, of petty theft with prior jail term in violation of Cal. Penal Code § 666, and sentenced to 24 months summary probation under the term that she serve 30 days in Los Angeles County Jail (Case Number 94F03627).

U.S. Courts have held that the crime of theft or larceny, whether grand or petty, involves moral turpitude. See *Matter of Scarpulla*, 15 I&N Dec. 139, 140 (BIA 1974), see also *Morasch v. INS*, 363 F.2d 30, 31 (9th Cir. 1966). However, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended. *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973).

The Ninth Circuit Court of Appeals addressed the issue of whether Cal. Penal Code § 484(a) constitutes a crime involving moral turpitude in *Castillo-Cruz v. Holder*, 581 F.3d 1154, 1157 (9th Cir. 2009). The Ninth Circuit reviewed lower court case law on convictions under Cal. Penal Code § 484(a), and determined that a conviction for theft (grand or petty) requires the specific intent to deprive the victim of his or her property permanently. *Id.* at 1160 (citations omitted). Therefore, the AAO finds that a conviction for petty theft under the California Penal Code is categorically a crime involving moral turpitude because it requires the permanent intent to deprive the victim of his or her property. Accordingly, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having committed crimes involving moral turpitude. The applicant does not contest her inadmissibility on appeal.

Section 212(h) of the Act provides, in pertinent part:

The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that --

(i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(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 [Secretary] 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 . . .

Section 212(h)(1)(A) of the Act provides that the Secretary may, in her discretion, waive the application of subparagraph (A)(i)(I) of subsection (a)(2) if the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status. An application for admission to the United States is a continuing application, and admissibility is determined on the basis of the facts and the law at the time the application is finally considered. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992).

Since the criminal convictions for which the applicant was found inadmissible occurred more than 15 years ago, it is waivable under section 212(h)(1)(A) of the Act. Section 212(h)(1)(A) of the Act requires that the applicant's admission to the United States not be contrary to the national welfare, safety, or security of the United States, and that she has been rehabilitated.

The record reflects that the applicant has resided in the United States since 1968. The applicant has significant family ties in the United States, including her 39-year-old daughter, [REDACTED] year-old son, [REDACTED] 34-year-old daughter, [REDACTED] 21-year-old daughter, [REDACTED] and 97-year-old mother, [REDACTED]. The applicant's children are natives and citizens of the United States, and her mother is a U.S. lawful permanent resident.

In an undated letter, the applicant's daughter, [REDACTED] asserts that she depends on her mother "emotionally, physically, mentally and spiritually." She states that she is a single mother and her mother helps care for her three minor children. [REDACTED] explains that her mother has "changed her life dramatically" since becoming sober from a heroin addiction in 1994. She notes that her mother became "a reborn Christian" and now appreciates her life, takes care of herself, and is a loving mother and grandmother.

In an undated letter, the applicant's 97-year-old mother, Teodora Lopez De Flores, asserts that her daughter has provided "round the clock care" for her since 2001. Ms. Flores notes that her daughter assists with housecleaning, cooking and personal care. She states that she would "worry tremendously" if the applicant is not by her side and would be "heartbroken." The applicant submitted copies of earnings and deductions statements issued to her from the In-Home Supportive Services of the California Department of Social Services for the care she provides her mother.

The record contains additional supporting letters from the applicant's children, which demonstrate the strong family bond they have with their mother and their interest in keeping their family unified. *See Letter from Shawn Stephanie Flores, undated, Letter from Fabian Jaime, dated July 4, 2008 and Letter from Avelina Jaime, dated July 8, 2008.*

The AAO finds that the record indicates that the applicant's admission to the United States is not contrary to the national welfare, safety, or security of the United States and that she has been rehabilitated, as required by section 212(h)(1)(A) of the Act. The applicant is the mother of four U.S. citizen children and the daughter of a U.S. lawful permanent resident. The supporting statements in the record attest to the applicant's rehabilitation and close relationship with her family members who reside in the United States. The applicant has not been convicted of a violent or dangerous crime. Her convictions involve theft and they occurred over 15 years ago. Consequently, she has established that she merits a waiver under section 212(h)(1)(A) of the Act.

Furthermore, the applicant has established that the favorable factors in her application outweigh the unfavorable factors. The favorable factors include the applicant's rehabilitation, the applicant's family ties in the United States and the passage of 16 years since her last conviction. The negative factors are her convictions for theft and period of unauthorized presence in the United States.

While the AAO cannot condone the applicant's criminal convictions and immigration violations, the AAO finds that the positive factors outweigh the negative and a positive exercise of discretion is appropriate in this case.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained and the application is approved.