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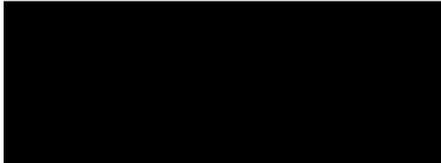
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



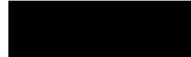
U.S. Citizenship  
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Services

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FILE:



Office: Chicago, IL

Date:

JAN 11 2011

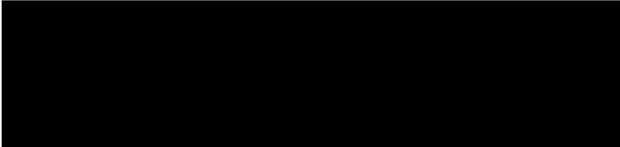
IN RE:



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:

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,

for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Chicago, Illinois, 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 district director for continued processing.

The applicant is a native and citizen of Honduras 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.

In a decision, dated May 31, 2008, the district director based his finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's conviction for theft. The district director then 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 a letter on appeal dated June 23, 2008, counsel states he does not believe a waiver is required in this case because the applicant's conviction falls under the petty offense exception. In addition, counsel submits documentation regarding the impact the applicant's inadmissibility would have on the applicant's spouse.

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 September 20, 2002 the applicant was convicted of Theft (less than \$300), a Class A misdemeanor. The applicant was sentenced to 180 days or six months in prison and 100 hours of

public service. The maximum sentence for a Class A misdemeanor in Illinois does not exceed imprisonment for one year.

At the time of the applicant's conviction, 720 ILCS 5/16-1 stated:

(a) A person commits theft when he knowingly:

- (1) Obtains or exerts unauthorized control over property of the owner; or
- (2) Obtains by deception control over property of the owner; or
- (3) Obtains by threat control over property of the owner; or
- (4) Obtains control over stolen property knowing the property to have been stolen or under such circumstances as would reasonably induce him to believe that the property was stolen; or
- (5) Obtains or exerts control over property in the custody of any law enforcement agency which is explicitly represented to him by any law enforcement officer or any individual acting in behalf of a law enforcement agency as being stolen, and
  - (A) Intends to deprive the owner permanently of the use or benefit of the property; or
  - (B) Knowingly uses, conceals or abandons the property in such manner as to deprive the owner permanently of such use or benefit; or
  - (C) Uses, conceals, or abandons the property knowing such use, concealment or abandonment probably will deprive the owner permanently of such use or benefit.

(b) Sentence.

- (1) Theft of property not from the person and not exceeding \$300 in value is a Class A misdemeanor.

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)(stating, "It is well settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude . . ."); *Morasch v. INS*, 363 F.2d 30, 31 (9th Cir. 1966)(stating, "Obviously, either petty or grand larceny, i.e., stealing another's property, qualifies [as a crime involving moral turpitude].") 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 AAO finds that a conviction for theft under 720 ILCS 5/16-1 is categorically a crime involving moral turpitude because it requires the permanent intent to deprive the victim of his or her property. Thus, the AAO finds that the applicant's conviction for theft under 720 ILCS 5/16-1 constitutes a crime involving moral turpitude. However, this conviction qualifies for the petty offense exception under section 212(a)(2)(A)(ii)(II) of the Act. As stated above, the applicant's sentence did not exceed six

months and the maximum sentence possible for a conviction under 720 ILCS 5/16-1 does not exceed one year.

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 district director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.