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

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

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Date: APR 0 5 2012

Office: OAKLAND PARK [redacted]

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:

[redacted]

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,

Michael Shumway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Oakland Park, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the Field Office Director will be withdrawn and the waiver applicant declared moot. The appeal will be dismissed and the matter will be returned to the Field Office Director for continued processing.

The applicant is a native and citizen of Jamaica who was found to be inadmissible under 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 crimes involving moral turpitude. The director indicated that the applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel disputes the director's finding that the applicant was convicted on September 19, 1995 in Florida as an adult, when the applicant was 16 years old and the judge made a finding of delinquency. Counsel asserts that on the applicant's certified disposition dated October 5, 1995, the word "Guilty" was crossed out and substituted with "Delinq.," thus stating "Adj. Delinq.," which is an adjudication of juvenile delinquency. Counsel maintains that a finding of juvenile delinquency is consistent with the applicant's sentence of "Committed to Level 10 Program, Juvenile Justice Department." Counsel states that in view of the Board of Immigration Appeal's (Board) holding in *In Re Devison-Charles*, 22 I&N Dec. 1362 (BIA 2000), that juvenile delinquency adjudications are not considered convictions under U.S. immigration laws, the applicant's adjudication of delinquency is not a conviction. Finally, counsel maintains that, assuming *in arguendo,* that a finding of delinquency is considered a crime under immigration laws, section 212(a)(2)(A)(ii)(I) excludes one moral turpitude crime committed more than five years before the visa application. Thus, counsel states that since the applicant's offense occurred in 1995 and the adjustment application was filed in 2006, eleven years after the crimes, the applicant is eligible for adjustment and the denial is wrong.

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.

The record reflects that on October 5, 1995, the applicant pled *nolo contendere* to burglary/assault in violation of Fla. Stat. § 810.02(2) and aggravated battery in violation of Fla. Stat. § 784.045.

Fla. Stat. § 810.02(2) section states:

> Burglary.—
> (1)(a) For offenses committed on or before July 1, 2001, "burglary" means entering or remaining in a dwelling, a structure, or a conveyance with the intent to commit an

offense therein, unless the premises are at the time open to the public or the defendant is licensed or invited to enter or remain.

. . .

(2) Burglary is a felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment or as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the course of committing the offense, the offender:
(a) Makes an assault or battery upon any person; or
(b) Is or becomes armed within the dwelling, structure, or conveyance, with explosives or a dangerous weapon; or
(c) Enters an occupied or unoccupied dwelling or structure, and:
1. Uses a motor vehicle as an instrumentality, other than merely as a getaway vehicle, to assist in committing the offense, and thereby damages the dwelling or structure; or
2. Causes damage to the dwelling or structure, or to property within the dwelling or structure in excess of $1,000.

Fla. Stat. § 784.045 states:

Aggravated battery.—
(1)(a) A person commits aggravated battery who, in committing battery:
1. Intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or
2. Uses a deadly weapon.
(b) A person commits aggravated battery if the person who was the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant.
(2) Whoever commits aggravated battery shall be guilty of a felony of the second degree . . .

Battery is defined in Fla. Stat. § 784.03 as the actual and intentional touching or striking another person against the will of the other, or intentionally causing bodily harm to another person.

The applicant does not dispute that he pled guilty to the charges levied against him. He contends that he was adjudicated delinquent, and that juvenile delinquency adjudications are not considered convictions for purposes of U.S. immigration law.

The record contains the applicant's court status dated October 5, 1995, which reflects that the applicant pled *nolo contendere* in The Circuit/Country Court in and for Broward County, Florida, to violation of Fla. Stat. §§ 810.02(2) and 784.045, and that the judge entered an adjudication of delinquency. The judge also sentenced the applicant to commitment to the level 10 program with the Juvenile Justice Department and to the Department of Health and Rehabilitative Services. The record of conviction thus demonstrates that the applicant was not prosecuted as an adult, but was proceeded against as a juvenile and adjudicated delinquent.

The Board stated in *In Re Devison-Charles* that it has consistently held that "juvenile delinquency proceedings are not criminal proceedings, that acts of juvenile delinquency are not crimes, and that findings of juvenile delinquency are not convictions for immigration purposes." 22 I&N Dec. at 1365. The Board further stated that the standards established in the Federal Juvenile Delinquency Act (FJDA) govern whether offenses are acts of delinquency or crimes, and that juvenile delinquency proceedings under the FJDA are civil, not criminal, adjudications. *Id.* at 1366. Additionally, the Board indicated that in determining whether a juvenile proceeding results in a criminal conviction or civil delinquency adjudication, the Board compares the judgment in question with adjudications under the FJDA. *Id.*

The Board was addressing whether youthful offender adjudication procedures set forth in Article 720 of the New York Criminal Procedure Law were similar to the juvenile delinquency provisions contained in the FJDA. In finding that Article 720 was sufficiently analogous the Board stated:

> Both the state and the federal statutes apply similar definitions of youths and juveniles, and both specify that neither a youthful offender adjudication nor a determination of juvenile delinquency constitutes a conviction. Both the state and the federal courts consider similar criteria to determine whether an offender will be treated as a juvenile or as an adult, and, likewise, both mandate that, in certain circumstances, a youth must be treated as an adult. Once a determination is made to treat the offender as a youthful offender or as a juvenile, the federal and state court records are deemed confidential.

22 I& N Dec. at 1366-1368.

In applying the FJDA as a benchmark, we find that the Florida statutes applicable to juveniles who have committed delinquent acts or violated the laws are similar in nature and purpose to the FJDA. Fla. Stat. § 985.03(6) defines children, youths, and juveniles as under 18 years old. Fla. Stat. § 985.03(8) provides that a "[c]hild who has been found to have committed a delinquent act" means a child who . . . is found by a court to have committed a violation of law or to be in direct or indirect contempt of court." Fla. Stat. § 985.03(56) states that a "[v]iolation of law" or "delinquent act" means a violation of any law of this state, the United States, or any other state which is a misdemeanor or a felony or a violation of a county or municipal ordinance which would be punishable by incarceration if the violation were committed by an adult." In Florida, the state attorney has discretion to charge a juvenile as an adult by using a direct filing to give adult court jurisdiction. *See* Fla. Stat. § 985.557. In order to direct file, the child must be a certain age and charged with committing a serious felony such as arson, robbery, kidnapping, murder, or manslaughter. *Id.* Additionally, there are circumstances in which the state attorney is required to direct file and treat a youth as an adult. *Id.* Lastly, Fla. Stat. § 985.35 specifies that a finding of delinquency is not considered a conviction and that the juvenile is not considered to have been found guilty or to be a criminal. In sum, the aforementioned Florida statutes are similar to the FJDA provisions: Florida law has a similar definition of youths and juveniles as the FJDA, Florida law specifies that a determination of juvenile delinquency does not constitute a conviction, and similar criteria are employed in Florida to determine whether an offender will be treated as a juvenile or as an adult, both mandate that, in certain circumstances, a youth must be treated as an adult. The applicant's case thus meets the Board's guidelines in establishing that a state delinquency

adjudicative procedure is sufficiently analogous to the procedure set forth under the FJDA. The applicant has successfully established that he is not "convicted" for immigration purposes. Accordingly, the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

While a juvenile delinquency is not a criminal conviction on which to base removal or bar relief from removal, in reviewing an application for a discretionary benefit, such as adjustment of status, the juvenile offense is a factor in evaluating whether to grant the immigration benefit as a matter of discretion. *Wallace v. Gonzales,* 463 F.3d 135 (2nd Cir. 2006).

Thus, the applicant is not inadmissible. The waiver application is unnecessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to the Act is moot and will not be addressed. Accordingly, the decision of the Field Office Director is withdrawn and the instant application for a waiver is declared moot.

ORDER: The decision of the Field Office Director is withdrawn, the waiver application waiver is declared moot and the appeal is dismissed. The Field Office Director shall continue processing the adjustment application (Form I-485) accordingly.