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



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

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DATE: JAN 25 2012

Office: WASHINGTON, DC

FILE: [REDACTED]

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:  
[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,

A handwritten signature in cursive script that reads "Michael Shumway".

for Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Washington, D.C. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Bolivia and is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is seeking adjustment of status pursuant to INA § 245(i), 8 U.S.C. § 1255(i) and is applying for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), to reside in the United States with her U.S. citizen spouse and children.

In a decision dated May 4, 2009, the Field Office Director concluded that the applicant did not establish that a qualifying relative would suffer extreme hardship and her application for a waiver of inadmissibility was denied accordingly.

On appeal, counsel for the applicant does not contest the applicant's inadmissibility, but states that the Field Office Director erred in not finding extreme hardship to the applicant's qualifying relatives.

The record contains, among other documentation, a legal brief by counsel for the applicant, a statement by the applicant's stepdaughter, statements by the applicant's husband, statements by the applicant, letters from the applicant's sons, biographical information for the applicant's U.S. citizen husband, medical records for the applicant's husband, biographical information for the applicant's eldest and youngest sons, letters from the applicant's clients, financial and employment documentation for the applicant and criminal records for the applicant.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2) of the Act provides, in pertinent part:

(A)(i) Except as provided in clause (ii), any 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, or...

is inadmissible.

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....

The BIA has also explained that “[t]he test to determine if a crime involves moral turpitude is whether the act is accompanied by a vicious motive or a corrupt mind. An evil or malicious intent is said to be the essence of moral turpitude.” *Matter of Flores*, 17 I&N Dec. 225, 227 (BIA 1980) (internal citations omitted).

When determining whether a crime involves moral turpitude, the statute under which the conviction occurred controls. *Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989). If the statute defines a crime “in which turpitude necessarily inheres,” then a conviction under that statute constitutes a crime involving moral turpitude. *Id.*

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a “realistic probability, not a theoretical possibility,” that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where, at the time of the proceeding, an “actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien's own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude.” *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, “the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude.” 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

The record reflects that on June 4, 1996 the applicant pled guilty in the Circuit Court of Fairfax County to Embezzlement in violation of Virginia Code § 18.2-111. The applicant was sentenced to 12 months imprisonment, ordered to pay court costs and restitution in the amount of \$1, 687.75, and to serve five years of probation.

Virginia Code § 18.2-111 provided, in pertinent part, at the time of the conviction:

If any person wrongfully and fraudulently use, dispose of, conceal or embezzle any money, bill, note, check, order, draft, bond, receipt, bill of lading or any other personal property, tangible or intangible, which he shall have received for another or for his employer, principal or bailor, or by virtue of his office, trust, or employment, or which shall have been entrusted or delivered to him by another or by any court, corporation or company, he shall be guilty of embezzlement. Embezzlement shall be deemed larceny and upon conviction thereof, the person shall be punished as provided in § 18.2-95 or § 18.2-96.

The AAO is not aware of and the applicant has not presented any case for which a conviction under Virginia Code § 18.2-111 did not involve moral turpitude. Embezzlement in violation of section 18.2-111 of the Virginia Code is a felony involving dishonesty, fraud, and misrepresentations. *U.S. v. Good*, 326 F.3d 589, 592 (4th Cir. 2003). Crimes involving fraud are considered to be crimes involving moral turpitude. *Jordan v. DeGeorge*, 341 U.S. 223 (1951). We find that the crime for which the respondent was convicted constitutes a crime involving moral turpitude. *See generally Matter of Batten*, 11 I&N Dec. 271, 272 (“There is no question but that embezzling or purloining involves moral turpitude”). The applicant did not contest her inadmissibility on appeal.

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

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; or

...

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 activities that are the basis for the applicant's criminal conviction occurred more than 15 years ago, on March 8, 1996, she is now eligible for a waiver 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 he has been rehabilitated. Evidence in the record to establish the applicant's eligibility under section 212(h)(1)(A)(ii) and (iii) of the Act consists of documentation that the applicant completed the terms of her probation, letters from her clients attesting to the applicant's moral character, letters of support from the applicant's spouse and children, and evidence of the applicant's employment and payment of U.S. federal income taxes.

The record indicates that the applicant's last arrest was on March 8, 1996 for the offense that led to her inadmissibility. The record does not indicate any arrests or convictions for the applicant since that date. A letter from the applicant's probation officer illustrates that she successfully completed her probation on December 21, 1998. Letters submitted by the applicant's children state that the applicant works hard to support her children and her husband financially and physically. Six of the applicant's clients submitted letters stating that they trust the applicant and that she responsibly completes her work. There is also documentation in the record that the applicant was employed and filed federal income taxes in the years preceding her application for a waiver of inadmissibility.

In view of the record, which shows that the applicant has not been convicted of any crimes since 1996 and has been gainfully employed and supporting her family both financially and physically, the AAO finds that the applicant has provided sufficient evidence to demonstrate that her 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)(ii) and (iii) of the Act.

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives). *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant's conviction for Embezzlement in 1996, and her lengthy unlawful presence in the United States. She has no other known criminal or immigration violations. The favorable factors in the present case are the applicant's family ties to the United States, including the applicant's support of her three children and assistance provided to her U.S. citizen spouse, who suffers from a disability, and hardship to her family if the application is denied. The record also contains evidence of the applicant's rehabilitated moral character, including letters of support written by her clients. The AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.