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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**

H2

Date: **JUL 13 2012** Office: MANILA

FILE: [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:

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 waiver application was denied by the Field Office Director, Manila, Philippines, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the record does not show that the applicant is 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), and the waiver application is unnecessary.

The applicant is a native and citizen of the Philippines 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 admitted the essential elements of 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). The field office director concluded that the applicant 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. *Decision of the Field Office Director*, dated May 17, 2010.

On appeal, counsel for the applicant asserts that the applicant has shown that denial of the present waiver application will create extreme hardship for his qualifying relatives. *Statement from Counsel on Form I-290B*, dated June 16, 2010.

The record contains, but is not limited to: a statement from counsel; statements from the applicant and his father; tax and employment records for the applicant's father; medical documents for the applicant's father; documentation in connection with criminal proceedings against the applicant; and a sworn statement in which the applicant discussed his conduct that led to criminal charges. The entire record was examined 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.

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.)

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.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709. However, this “does not mean that the parties would be free to present any and all evidence bearing on an alien’s conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself.” *Id.* at 703.

The record shows that the applicant was charged with crimes in the Philippines, including: “Less Serious Physical Injuries” for his conduct on or about September 18, 1997; Frustrated (Attempted) Murder for his conduct on or about July 3, 2004; three charges of Grave Threats for his conduct on or about July 2, 2004; and Illegal Possession of Firearms for his conduct on or about April 25, 2005. All of these charges were dismissed, and the record does not show that the applicant has been convicted of a crime.

The field office director found that, despite the fact that the applicant was not convicted of a crime, he admitted the essential elements of each offense for which he was charged. The field office director determined that the applicant’s offenses constitute crimes involving moral turpitude, and that he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The field office director

referenced the applicant's sworn statement executed on October 9, 2009 before a U.S. Consular Officer in Manila, Philippines as the evidence that the applicant made admissions to crimes involving moral turpitude.

In order for a statement made by an applicant to serve as an admission to a crime (or the essential elements of crime) involving moral turpitude and basis for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act, three requirements must be met: The applicant must be given the definition and essential elements of the crime that he is alleged to have committed prior to his admission, the applicant must admit conduct that constitutes the essential elements of the crime in question, and the applicant's admission must be voluntary. *See Matter of K-*, 7 I&N Dec. 594, 598 (BIA 1957).

Upon review, the October 9, 2009 sworn statement does not meet the requirements of an admission for the purpose of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. For each of the alleged offenses, the applicant was not provided the definition and essential elements of specific crimes prior to discussing his conduct. The references to Articles of the Revised Penal Code of the Philippines, by themselves, were not sufficient to inform the applicant, in the detail required, of each particular element of specified statutory offenses. The consular officer offered to provide the elements of the crime of attempted murder, but the record shows that the elements were not in fact read to the applicant, likely because he indicated that he was aware of the requirements. An applicant's indication that he is aware of the elements of a crime does not remove the requirement to provide the elements to him in order to properly obtain an admission to a crime involving moral turpitude.

The consular officer referenced Article 252 of the Revised Penal Code of the Philippines and purportedly summarized elements of the offense of "less serious physical injuries." However, the offense of Less Serious Physical Injuries is proscribed by Article 265 of the Revised Penal Code of the Philippines, and involves more elements than those identified by the consular officer. Article 252 of the Revised Penal Code of the Philippines addresses "physical injuries inflicted in a tumultuous affray" when the person responsible cannot be identified, and it does not apply to the acts that the applicant discussed.

Accordingly, the applicant's statement regarding his conduct does not meet the requirements of an admission to a crime involving moral turpitude, and it is not a sufficient basis for a finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. The applicant is not inadmissible under other provisions of the Act. Thus, there is insufficient evidence in the record to establish that the applicant is inadmissible and a waiver application is necessary. As the waiver application is unnecessary, the appeal will be dismissed.

ORDER: The appeal is dismissed as the record does not show that a waiver application is necessary.