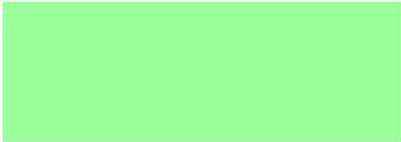




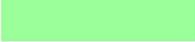
U.S. Citizenship
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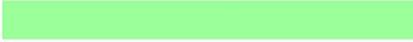
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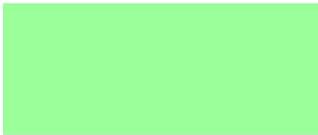
OFFICE: MIAMI

FILE: 

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. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,


fr

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Miami, Florida and is now before the Administrative Appeals Office (AAO) on appeal. As the applicant is not inadmissible, the waiver application will be deemed unnecessary, and the appeal will be dismissed.

The applicant is a native and citizen of Russia 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 her U.S. citizen spouse.

The Field Office Director determined that the applicant failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated March 29, 2012.

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 [REDACTED] 2011, the applicant was arrested for and subsequently charged with felony grand theft pursuant to 812.014(2)(c) of the Florida Statutes. The record also reflects that the applicant entered a plea of not guilty on [REDACTED] 2011, and was then accepted in Florida's pre-trial intervention program on [REDACTED] 2011, and the case was closed with a disposition of *nolle prosequi* on [REDACTED], 2011. The record does not indicate that the applicant entered a plea of guilty or was convicted of any crime in relation to this arrest.

It is noted that inadmissibility under section 212(a)(2)(A)(i)(I) of the Act may be based on an admission to having engaged in acts that constitute the essential elements of a crime involving moral turpitude.

The Board of Immigration Appeals (BIA) has established rules of procedure for determining whether an individual who has not been convicted of a crime, is, nevertheless, inadmissible for having admitted to acts that constitute the essential elements of that crime. *See Matter of P--*, I&N Dec. 33 (BIA 1941); *Matter of J--*, 2 I&N Dec. 285 (BIA 1945); *Memorandum of Solicitor General*, dated May 29, 1945; *Matter of K--*, 7 I&N Dec. 594 (BIA 1957). To have an admission qualify as having been validly obtained, the record must establish that certain procedural requirements have been met: the admitted conduct must constitute the essential elements of a crime in the jurisdiction in which it occurred; the applicant must have been provided with the definition and essential elements of the crime prior to his or her admission;

the applicant must admit the conduct constituting the essential elements of the crime and that he or she committed the offense; and the applicant's admission must be voluntary. *Id.*

These requirements have been incorporated into the Foreign Affairs Manual (FAM) of the Department of State for use by consular officers overseas in determining inadmissibility and are found in section 40.21(a), Note 5.1 of Volume 9 of the FAM, which states, in pertinent part:

If it is necessary to question an alien for the purpose of determining whether the alien is ineligible to receive a visa as a person who has admitted the commission of the essential elements of a crime involving moral turpitude, the consular officer shall make the verbatim transcript of the proceedings under oath a part of the record. In eliciting admissions from visa applicants concerning the commission of criminal offenses, the consular officer must observe carefully the following rules of procedure which have been imposed by judicial and Board of Immigration Appeals decisions:

- (1) You should give the alien a full explanation of the purpose of the questioning. The applicant must then be placed under oath and the proceedings must be recorded verbatim.
- (2) The crime, which the alien has admitted, must appear to constitute moral turpitude based on the statute and statements from the alien. It is not necessary for the alien to admit that the crime involves moral turpitude.
- (3) Before the actual questioning, the consular officer shall give the applicant an adequate definition of the crime, including all essential elements. The consular officer must explain the definition to the applicant in terms he or she understands, making certain it conforms to the law of the jurisdiction where the offense is alleged to have been committed.
- (4) The applicant must then admit all the factual elements which constituted the crime.
- (5) The applicant's admission of the crime must be explicit, unequivocal and unqualified.

As the applicant has not been convicted of the crime of felony grand theft in any criminal proceeding, finding her to have admitted to the essential elements of this crime requires due process, in accordance with the process described in 9 FAM section 40.21(a) N5.1. The record does not contain sufficient evidence to establish that the applicant in the present case has made such an admission.

Accordingly, the AAO concludes that the applicant has not been convicted of a crime involving moral turpitude that would render her inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act. As the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act, she does not require a waiver pursuant to the present Form I-601 application, and the Field Office Director's

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NON-PRECEDENT DECISION

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decision will be withdrawn.

ORDER: As the applicant is not inadmissible, the waiver application is unnecessary. The Field Office Director's decision is withdrawn, and the appeal is dismissed. The case is returned to the Field Office Director for further proceedings in accordance with this determination.