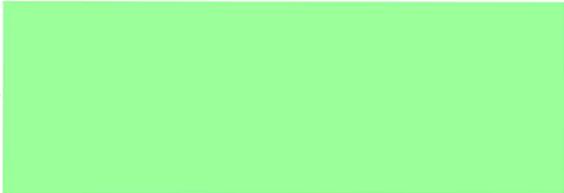


(b)(6)



U.S. Citizenship  
and Immigration  
Services



DATE: **FEB 28 2013**

OFFICE: SANTO DOMINGO

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Santo Domingo, Dominican Republic and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Dominican Republic 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 is the son of a lawful permanent resident. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States.

The Field Office Director determined that the applicant had not established eligibility for a waiver under section 212(h) of the Act and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated November 15, 2011.

On appeal, the applicant states that his conviction relates to an attack on his father in which hit one of the attackers with a rod, causing his death. *Form I-290B, Notice of Appeal or Motion*, dated December 12, 2011.

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 at the time of his visa interview, the applicant informed the Department of State consular officer that he had been convicted of murder in 1997. On appeal, the applicant states that his conviction is based on an incident in which he fatally injured an individual who was attacking his father and that he was sentenced to three years in prison for his offense.

The record does not contain any documentation from the applicant's record of conviction and his explanation of his offense indicates that he may have been convicted of an offense other than murder, generally defined in U.S. jurisprudence as the "unlawful killing of a human being by another with malice aforethought, either express or implied." *Black's Law Dictionary*, Sixth Edition (citing *Com. v. Carroll*, 194 A.2d 911, 914). However, the burden of proof in waiver proceedings rests with the applicant. In the present matter, the applicant has failed to provide any documentary evidence that establishes the section of the Dominican Republic's Penal Code under which he was convicted or that demonstrates the actions that led to his conviction would not be considered murder, as defined in American jurisprudence. Accordingly, we find the applicant's 1997 conviction to be a conviction for murder.

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.)

The BIA has long held that murder and attempted murder are categorically crimes involving moral turpitude. *Matter of Lopez-Amaro*, 20 I&N Dec. 668 (BIA 1993); *see also Matter of Awaijane*, 14 I&N Dec. 117 (BIA 1972). Therefore, the applicant's conviction for murder is a conviction for a crime involving moral turpitude and bars his admission to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act.

While section 212(a)(2)(A)(i)(I) inadmissibilities may be waived under section 212(h) of the Act, the AAO notes that section 212(h)(2) also states that:

[n]o waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture . . . .

In that no waiver is available to an alien who is inadmissible to the United States as a result of having been convicted of murder, the applicant in the present case is not eligible for waiver consideration under section 212(h) of the Act.

The burden of establishing that an application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.