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U.S. Citizenship  
and Immigration  
Services

[Redacted]

DATE:

**MAR 25 2013**

Office: NEW YORK, NY

FILE:

[Redacted]

IN RE:

Applicant:

[Redacted]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to 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.

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 "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, New York Field Office in New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. As we find that the applicant is not inadmissible, the waiver application is unnecessary. The appeal will be dismissed as moot.

The applicant is a native and citizen of Argentina who was found to be inadmissible to the United States pursuant to section 212(a)(2)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(I), as an alien who conspired to engage in money laundering, and section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 212(a)(2)(A)(i)(I), for having been convicted of 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 conjunction with an adjustment of status application, to obtain admission to the United States as a lawful permanent resident.

In a decision dated November 19, 2009, the director determined that the applicant was inadmissible for having committed a crime involving moral turpitude. He further found that the applicant's conviction also rendered him inadmissible under section 212(a)(2)(I) of the Act for having conspired to engage in money laundering, for which there is no waiver of inadmissibility. *See Decision of the District Director*, dated May 26, 2010. He therefore denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, counsel contests the director's findings and asserts that the applicant's convictions do not render him inadmissible.

The record of evidence includes, but is not limited to the counsel's brief; the applicant's wife's statement; a psychological evaluation of the applicant's wife; documents evidencing the bona fides of the applicant's marriage; and the applicant's criminal records. 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 all relevant evidence considered in reaching 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.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

- (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

Section 212(a)(2)(I) of the Act provides:

Money Laundering

Any alien –

- (i) who a consular officer of the Attorney General knows, or has reason to believe, has engaged, is engaging, or seeks to enter the United States to engage, in an offense which is described in section 1956 or 1957 of title 18, United States Code (relating to laundering of monetary instruments); or
- (ii) who a consular officer or the Attorney General knows is, or has been, a knowing aider, abettor, assister, conspirator, or colluder with others in an offense which is described in such section;

is inadmissible.

The record reflects that the applicant was admitted to the United States on or about November 30, 1988 as a B-2 nonimmigrant visitor for an authorized period until May 29, 1989. The applicant thereafter remained in the United States beyond the authorized period of stay without permission. On June 18, 2002, the applicant was convicted of Conspiracy to Defraud the United States in violation of section 371 of Title 18 of the United States Code (U.S.C.) and was sentenced to two years of probation. The conviction records disclose that the underlying criminal offenses of the conspiracy were offenses under 31 U.S.C. § 5324(a)(3) & (c)(2), for structuring cash transactions to evade federal reporting requirements (structuring offense), and 18 U.S.C. § 1030(a)(2)(B) & (c)(2)(B)(i), for intentionally accessing a computer without authorization and thereby obtaining information from a United States agency or department for commercial advantage or private financial gain.

Based on the applicant's convictions, the director determined that the applicant was inadmissible for having committed a crime involving moral turpitude under section 212(a)(2)(A)(i)(I) of the Act, and because there was reason to believe that the applicant engaged in money laundering pursuant to section 212(a)(A)(I) of the Act. As there is no waiver available for inadmissibility arising from having engaged in money laundering, the applicant was found ineligible for the waiver under section 212(h) of the Act. Counsel disputes the findings of inadmissibility.

After careful review of the record, the AAO concludes that the applicant's conspiracy conviction does not render him inadmissible under section 212(a)(2)(I) of the Act as an offense described in 18 U.S.C. §§ 1956 & 1957 relating to money laundering. As an initial matter, we note that the

applicant's conviction is for conspiracy to commit offenses under 31 U.S.C. § 5324(a)(3) & (c)(2) and 18 U.S.C. § 1030(a)(2)(B) & (c)(2)(B)(i). He was not convicted of a conspiracy to commit offenses that specifically violated the money laundering provisions of 18 U.S.C. §§ 1956 & 1957. However, even in the absence of a conviction for a federal money laundering offense, an adjudicator may find that there is "reason to believe" that an applicant has engaged in money laundering. See generally *Matter of Rico*, 16 I&N Dec. 181 (BIA 1977) (determining whether there was reason to believe that the respondent was a controlled substances trafficker to support inadmissibility under section 212(a)(2)(C) of the Act in the absence of a conviction). The phrase "reason to believe" has been equated with the standard for "probable cause." See *United States v. Veal*, 453 F.3d 164, 167 n.3 (3d Cir. 2006); see also *Matter of A-H-*, 23 I&N Dec. 774, 789 (A.G. 2005). The AAO therefore compares the applicant's conviction for conspiracy with the money laundering provisions of 18 U.S.C. §§ 1956 & 1957 to determine whether there is "reason to believe" that he engaged in money laundering as described in those latter provisions.

At the time of the applicant's 2002 arrest and conviction, the relevant criminal statutes, in pertinent parts, were as follows:

18 U.S.C. § 1956<sup>1</sup>. Laundering of monetary instruments –

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

- (A) (i) with the intent to promote the carrying on of specified unlawful activity; or  
(ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or
- (B) knowing that the transaction is designed in whole or in part—
  - (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
  - (ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

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<sup>1</sup> Our review indicates that 18 U.S.C. § 1956(a)(1) is the relevant subsection of that statute in determining whether the applicant's convictions relate to a money laundering offense. Section 1956(a)(2) of title 18, U.S.C., relates to international money laundering transactions. There is no suggestion in the criminal records in this case that the applicant's conviction involved such international transactions. See *Criminal Information, charging applicant under 18 U.S.C. § 371*. Likewise, the applicant's criminal offense does not appear to fall within the ambit of 18 U.S.C. § 1956(a)(3), which was enacted to cover situations where law enforcement officials acting undercover led the offender into believing that the proceeds from a criminal source are being used to promote a predicate offense when in fact they are not. 134 Cong. Rec. S17360-02.

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(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true . . .

18 U.S.C. § 1957. Engaging in monetary transactions in property derived from specified unlawful activity –

(a) Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than \$10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b) . . .

31 U.S.C. § 5324. Structuring transactions to evade reporting requirement prohibited –

(a) Domestic coin and currency transactions involving financial institutions.—No person shall, for the purpose of evading the reporting requirements of section 5313(a) or 5325 or any regulation prescribed under any such section, the reporting or recordkeeping requirements imposed by any order issued under section 5326, or the recordkeeping requirements imposed by any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508— . . .

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions. –

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c) International monetary instrument transactions.—No person shall, for the purpose of evading the reporting requirements of section 5316—...

(2) file or cause or attempt to cause a person to file a report required under section 5316 that contains a material omission or misstatement of fact...

18 U.S.C. § 1030. Fraud and related activity in connection with computers<sup>2</sup> –

(a) Whoever—...

(2) intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains—...

(B) information from any department or agency of the United States;

(c) The punishment for an offense under subsection (a) or (b) of this section is— ...

(2) ...

(B) a fine under this title or imprisonment for not more than 5 years, or both, in the case of an offense under subsection (a)(2), or an attempt to commit an offense punishable under this subparagraph, if—...

(i) the offense was committed for purposes of commercial advantage or private financial gain;

The AAO observes that 18 U.S.C. § 1030(a)(2)(B) & (c)(2)(B)(i) addresses computer fraud and abuse and does not relate to a money laundering offense. In comparing the remaining three criminal statutes, we note that a conviction for money laundering under 18 U.S.C. § 1956 involves the laundering of proceeds from certain criminal activities. See *U.S. v. Ghali*, 699 F.3d 845 (7th Cir. 2012); *U.S. v. Gabel*, 85 F.3d 1217, 1224 (7th Cir. 1996) (“The offense of money laundering is the act of designing a transaction to conceal or disguise the nature or other identifying features of the property.”). Similarly, a violation of 18 U.S.C. § 1957 involves engaging in monetary transactions using property that is derived from specified unlawful activity. Both provisions also require knowledge<sup>3</sup> that the property being used in the financial transaction is derived from a criminal activity. In contrast, the legality of the conduct that furnishes the money, that is then later involved in a structuring transaction, is not determinative of, or an element of, a structuring offense under 31 U.S.C. § 5324. *Gabel*, 85 F.3d at 1223. Likewise, knowledge that the money used in a structuring transaction is criminally derived is also not an element of a structuring offense. Thus, unlike the money laundering provisions, 31 U.S.C. § 5324 can be violated where the defendant has no knowledge that the money used in a structuring transaction is criminally derived, or even where the money is not derived from criminal activity at all.

Accordingly, in the instant case, the applicant’s conviction for conspiracy to commit a structuring offense under 31 U.S.C. § 5324 did not require that the property involved in the structuring offense

<sup>2</sup> Section 1030 of title 18 of the U.S.C. is popularly known as the Computer Fraud and Abuse Act of 1986 (CFAA).

<sup>3</sup> The exception is 18 U.S.C. § 1956(a)(3), where the offender is led to believe by undercover law enforcement officers in sting operations that the property used in the money laundering transaction is criminally deprived, when in fact it is not. See Fn. 1.

was derived from some form of criminal activity, and if it was, that he had knowledge of the criminal source of the property. We therefore cannot conclude from the applicant's conviction alone that there is "reason to believe" that his offense is one that is "described in" the money laundering provisions of 18 U.S.C. §§ 1956 and 1957.

We now consider the applicant's underlying criminal records, including the criminal information, plea agreement, sentencing hearing transcript, as well as the undisputed portions of the presentence investigation report, to determine whether a "reason to believe" ground of inadmissibility can be supported. The presentence investigation report does indicate that others involved in the conspiracy were part of securities fraud schemes, the proceeds from which they then transferred into a maze of different accounts. *See Presentence Investigation Report* at 5. However, the report also notes that the applicant was not a participant in these schemes. *See id.* at 7. There is no indication from the underlying records that the applicant was even aware of the securities scheme that was furthered by his actions. Likewise, the sentencing court noted that the prosecution advised that although the applicant had furthered a securities fraud scheme by his actions, he was not a culpable participant in them. *See Sentencing Hearing Transcript*, dated June 18, 2002, at 7. Furthermore, the addendum to the presentence investigation report, dated June 3, 2002, which addressed the parties' objections affecting the sentencing guideline calculations, indicates that both the prosecution and the applicant joined in an objection to the probation officer's initial contention that the applicant had knowledge<sup>4</sup> that the funds involved were the result of illegal activity. The report was amended in favor of this objection, and was accepted by the criminal court. *See Sentencing Hearing Transcript*, dated June 18, 2002, at 2-3. Thus, after careful review of the record, we conclude that it does not demonstrate that the applicant had the requisite knowledge that the money used in the structuring transactions was derived from criminal activity. Accordingly, the AAO cannot conclude that there is reason to believe that the applicant's conviction for conspiracy under 18 U.S.C. § 371 to structure cash transactions in violation of 31 U.S.C. § 5324 is for an offense described in the money laundering provisions of 18 U.S.C. §§ 1956 and 1957. He is therefore not inadmissible under 212(a)(2)(I) of the Act.

We now consider counsel's assertion that the applicant's conviction is not for an offense that constitutes a crime involving moral turpitude under section 212(a)(2)(A)(i)(I) of the Act. *See Counsel's Appeal Brief* at 12.

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

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<sup>4</sup> According to the presentence report, the applicant stated to the probation office that at the time he was committing the crime, he knew his conduct was not right, but was not aware it was a crime. *See Presentence Investigation Report* at 11.

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. The methodology adopted by the Attorney General consists of a three-pronged approach. 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. *Silva-Trevino*, 24 I&N Dec. at 698 (citing *Duenas-Alvarez*, 549 U.S. at 193). 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.” *Silva-Trevino*, 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage or “modified categorical” inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. *Silva-Trevino*, 24 I&N Dec. 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. Finally, 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. *Id.* 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 . . . 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 (citation omitted).

The BIA has held that, as a matter of law, a conspiracy to commit an offense involves moral turpitude only if the offense which is the object of the conspiracy involves moral turpitude. See *Matter of M-*, 8 I&N Dec. 535, 541 (BIA 1960). Thus, we consider whether the underlying offenses of the conspiracy<sup>5</sup> of which the applicant was convicted constitute crimes involving moral turpitude.

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<sup>5</sup> We note initially that the judgment of conviction contained in the record is misleading in that it states that the applicant’s conviction is for Conspiracy to Defraud the United States (wire fraud) under 8 U.S.C. § 371. The federal conspiracy statute provides that “[i]f two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose.” 18 U.S.C. § 371. Thus, an individual could be convicted of a conspiracy to commit an offense against the United States or a conspiracy to defraud the United States. However, as noted herein, the underlying record of conviction does not charge or allege any act of fraud or fraudulent intent on the applicant’s part. In fact, the criminal information specifically charges him under the first clause of the conspiracy clause, namely conspiring “to commit offenses against the United States.” See *Criminal Information* at 6-7. Moreover, there is no indication that the applicant was ever charged or convicted with conspiracy to commit wire fraud, which would be an offense under 18 U.S.C. § 1343.

In *Matter of L-V-C-*, the BIA held that a violation of 31 U.S.C. §§ 5324(1) and (3), for causing a financial institution to fail to file currency transaction reports and of structuring currency transactions to evade reporting requirements, did not constitute a crime involving moral turpitude because the offense did not include morally reprehensible conduct. 22 I&N Dec. 594, 603 (BIA 1999) (looking at the statutory elements of the offense and the record of conviction (under a modified categorical approach) to conclude that the respondent's offense did not involve moral turpitude). The BIA noted that a conviction for a structuring offense could result where the offender did not have knowledge of the illegality of structuring transactions, and that a conviction did not require a fraud upon the government. *Matter of L-V-C-*, 22 I&N Dec. at 597-601. It further held that a structuring offense was not inevitably nefarious. *Id.* at 599.

However, the BIA recognized too that a violation of 31 U.S.C. § 5324 could occur where the offender had knowledge that structuring was illegal or that the transactions were being committed to further a fraud. *Matter of L-V-C-*, 22 I&N Dec. at 603 (noting that “[n]o doubt, some structuring offenses under § 5324 involve deliberate attempts to deprive the Government of information which would otherwise have been valuable in combating criminal activity.”). Thus, pursuant to *Silva-Trevino*, we consider additional evidence outside the conviction record to determine whether moral turpitude adheres to the applicant's underlying conduct. 24 I&N Dec. at 699-704, 708-709. Although this does not mean that any and all evidence will be considered, we find that the presentence investigation report in this case, to which the both parties had the opportunity to object, has sufficient indicia of reliability upon which we may rely. As previously noted, the report does not disclose that the applicant had any intent to deceive or commit a fraud, or that in committing the offense, he had knowledge of: (1) the illegality of the structuring offense, (2) that the property used in the structuring offenses were criminally deprived; or (3) that the structuring was intended to further a criminal scheme. *See also* Fn. 4. Accordingly, the AAO concludes that the record does not demonstrate that underlying structuring offense of the conspiracy conviction constitutes a crime involving moral turpitude.

Finally, we consider whether moral turpitude adheres to the applicant's conviction for conspiracy to commit an CFAA offense under 18 U.S.C. §§ 1030(a)(2)(B) (to intentionally access a computer without authorization or exceeding authorized access, and thereby obtain information from a U.S. agency or department) and (c)(B)(i) (for the purpose of commercial advantage or private financial gain).

The applicant's conviction occurred in Third Circuit, and in reviewing district court cases in that circuit involving violations of the CFAA, we observe that an offense under the specific subsection under which the applicant was convicted requires intentional conduct. *See U.S. v. Auerheimer*, 2012 WL 5389142, at \*3 (D.N.J. Oct. 26, 2012) (finding that the charging document there sufficiently alleged the elements of unauthorized access and conduct demonstrating the defendant's knowledge and intent to gain unauthorized access to support a charge under 18 U.S.C. § 1030(a)(2)(C)<sup>6</sup>). However, a forbidden act that is done willfully – in other words, deliberately and with knowledge – is not necessarily done with evil intent. *See Hirsch v. INS*, 308 F.2d 562, 567 (9th Cir. 1962)

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<sup>6</sup> The statutory language and the elements of the offense under 18 U.S.C. § 1030(a)(2)(C) are nearly identical to that of 18 U.S.C. § 1030(a)(2)(B), except that the information that is obtained is from a “protected computer” rather than a U.S. agency or department.

(finding that a conviction for willfully making false statements to a federal agency does not necessarily involve an evil intent, such as an intent to defraud, and thus, looking to underlying conviction record to determine whether the offense involved such evil intent for purposes of a moral turpitude determination); *see generally Matter of L-V-C-*, 22 I&N Dec. at 599 (a structuring offense under 31 U.S.C. § 5324 not a crime involving moral turpitude where the offender acts with a motive or intention of evading federal reporting requirements on financial transactions, but not necessarily with knowledge that the conduct was illegal and or with intent to commit fraud upon the government). Such evil intent, however, is included in other subsections of the CFAA, as an element of the offense. *See* 18 U.S.C. § 1030(a)(4) and 6) (“knowingly and with intent to defraud ...”); 18 U.S.C. § 1030(a)(7) (“with intent to extort...”). Accordingly, the AAO concludes that the applicant’s conviction under 18 U.S.C. § 1030(a)(2)(B) and (c)(2)(B)(i) is not categorically a crime involving moral turpitude. Moreover, we have already applied the three-part analytical framework of *Silva-Trevino* to examine the underlying conviction record and other reliable records pertaining to the applicant’s conspiracy conviction and have found that it failed to demonstrate that the conviction involved turpitudinous conduct.

After careful review of the record, the AAO finds that the applicant’s convictions do not render him inadmissible under section 212(a)(2)(A)(i)(I) of the Act, for having been convicted of a crimes involving moral turpitude, or section 212(a)(2)(I) of the Act, for having engaged in money laundering.

As we have found that the applicant is not inadmissible, the waiver application is unnecessary and the appeal will be dismissed as moot.

**ORDER:** As the applicant is not inadmissible, the waiver application is unnecessary. The appeal is dismissed.