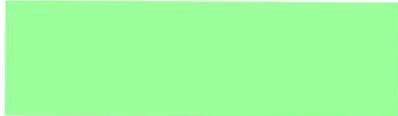




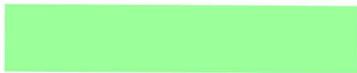
U.S. Citizenship
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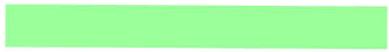


DATE: NOV 18 2013

OFFICE: LOUISVILLE



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), section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) 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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Louisville, Kentucky denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico 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 was also found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring an immigration benefit by fraud or willful misrepresentation and section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for making a false claim to U.S. citizenship. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and children.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for the applicant's spouse and there is no waiver available for the applicant's inadmissibility under section 212(a)(6)(C)(ii) of the Act. Accordingly, the Field Officer Director denied the application. *See Decision of the Field Office Director*, dated April 15, 2013.

On appeal, counsel for the applicant asserts that the applicant's evidence concerning her false claim to U.S. citizenship was not properly considered and the applicant demonstrated that her husband and children would suffer extreme financial and emotional hardship if her waiver is not granted.

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).

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 reflects that, on September 25, 2009, the applicant was convicted in United States District Court, Eastern District of Kentucky for falsely representing a social security number, 42 U.S.C. § 408. The Field Office Director found the applicant to be inadmissible to the United States for having been convicted of crimes involving moral turpitude. As the applicant has not disputed inadmissibility on appeal and the record does not show the Field Office Director’s finding of inadmissibility to be erroneous, the AAO will not disturb the inadmissibility finding.

The Sixth Circuit Court of Appeals, in *Serrato-Soto v. Holder*, 570 F.3d 686 (6th Cir. 2009), held that a crime including, as essential elements, the intent to defraud and some affirmative action beyond mere possession falls within the court’s understanding of moral turpitude. It is noted that the applicant’s plea agreement for her conviction under 42 U.S.C. § 408 indicates that the essential elements of her conviction include both a false representation of a social security number and the intent to deceive.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The applicant asserts that she entered the United States on the 13th or 14th of February 2001 using the visa and passport of her sister. As such, the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States through fraud or misrepresentation. The applicant does not dispute her inadmissibility pursuant to this section.

Section 212(a)(6)(C) of the Act provides in pertinent part:

(C) Misrepresentation. –

....

(ii) Falsely Claiming Citizenship

- (I) In general.- Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A)

or any other Federal or State law is inadmissible.

The record reflects that on June 30, 2004, the applicant signed and dated a voter registration form. The voter registration form includes a block letter heading of "For U.S. Citizens Only," and a declaration swearing or affirming that the signatory is, amongst other qualifications, a U.S. citizen. The applicant was, on June 11, 2009, indicted for falsely and willfully representing herself to be a citizen of the United States, in violation of 18 U.S.C. § 911. This count was dismissed on September 11, 2009 at the time of the applicant's guilty plea to falsely representing a social security number.

The applicant contends that she spoke and read English poorly at the time that she registered to vote and only realized that she had registered when she was criminally charged. The applicant asserts that she has not voted in any election in the United States and elected not to renew her voter's registration upon the renewal of her driver's license on June 18, 2012. Counsel for the applicant submits the Immigration and Naturalization Service memorandum, *Procedures for Handling Naturalization Applications of Aliens Who Voted Unlawfully or Falsely Represented Themselves as U.S. Citizens by Voting or Registering to Vote*, dated May 7, 2002, which states that a false representation is not limited to oral statements, but can also be made in signing a voter registration card asking the question, "Are you a U.S. Citizen?" Counsel contends that the memorandum's example scenario is similar to a form requiring an applicant to affirmatively check a box, which is not required in the applicant's voter registration form. However, the memorandum further states that an applicant can make a false representation in declaring U.S. citizenship, orally or written, under oath or penalty of perjury. The applicant's voter registration form requires the applicant to sign a voter declaration swearing or affirming that she is a U.S. citizen and warns that an untrue statement can result in conviction and a fine and/or jail.

It is noted that the applicant indicates that she declined to renew her voter's registration upon renewal of her license on June 18, 2012. The record does not contain any indication that the applicant attempted to cancel her voter's registration prior to this date. The applicant has failed to satisfy her burden of demonstrating that did not know the contents of her voter registration form on June 30, 2004. Section 291 of the Act, 8 U.S.C. § 1361. As such, the applicant is also inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) for falsely claiming citizenship to acquire a federal or state benefit.

The applicant seeks a waiver of inadmissibility based upon her conviction for a crime involving moral turpitude and procurement of an immigration benefit through misrepresentation pursuant to sections 212(h) of the Act, 8 U.S.C. § 1182(h), and 212(i) of the Act, 8 U.S.C. § 1182(i), respectively.

However, the applicant is also admissible to the United States pursuant to section 212(a)(6)(C)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii)(I), for making a false claim to United States citizenship on June 30, 2004. There is no waiver available for this ground of inadmissibility. Accordingly, no purpose would be served in discussing whether the applicant has

established that denial of the waiver would result in extreme hardship to a qualifying relative or whether the applicant merits the waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under sections 212(h) and 212(i) of the Act, the burden of establishing that the application merits approval rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met her burden.

ORDER: The appeal is dismissed.