



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-G-G-

DATE: OCT. 19, 2015

APPEAL OF NEWARK FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of Ecuador, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(h), 8 U.S.C. § 1182(h). The Field Office Director, Newark Field Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed as the Applicant is not inadmissible and the waiver application is unnecessary.

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude. On February 26, 2014, the Applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status pursuant to the Cuban Adjustment Act, and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act in order to remain in the United States with her lawful permanent resident spouse.

In a decision dated December 15, 2014, the Director found that the Applicant had not established that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility, and the waiver application was denied accordingly.

On appeal the Applicant asserts that her spouse will suffer extreme hardship because of his health problems if she is not allowed admission into the United States. With the appeal the Applicant submits a brief, medical information, and financial documentation. The entire record was reviewed and considered in rendering this decision.

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.

(b)(6)

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(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 record reflects that on [REDACTED] 2009, the Applicant was charged with Theft By Unlawful Taking in the Third Degree, in violation of New Jersey Code of Criminal Justice section 2C:20-3. In the Superior Court of New Jersey, [REDACTED] the Applicant was placed in a Pretrial Intervention Program, with proceedings against her postponed for 36 months, and ordered to pay restitution of \$50,000. The record further reflects that the Applicant's Pretrial Intervention Program was completed and the charges against her were dismissed on [REDACTED] 2013.

Section 101(a)(48) of the Immigration and Nationality Act (the Act) provides:

(A) The term "conviction" means . . . a formal judgment of guilt . . . entered by a court or, if adjudication of guilt has been withheld, where—

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Where an individual pleads guilty or nolo contendere, or is found guilty, but entry of the judgment is deferred by the court to allow for a period of probation and/or completion of a diversion program, the alien has been convicted for immigration purposes even if the charges are later dismissed. *See Matter of Marroquin-Garcia*, 23 I&N Dec. 705, 714-15 (A.G. 2005); *Matter of Roldan-Santoyo*, 22 I&N Dec. 512 (BIA 1999).

By contrast, an alien has *not* been convicted for immigration purposes where the criminal charges were dismissed following successful completion of a pretrial diversion program which occurred

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prior to any pleading or finding of guilt. *Matter of Grullon*, 20 I&N Dec. 12, 14-15 (BIA 1989) (citing *Matter of Ozkok*, 19 I&N Dec. 546 (BIA 1988)). For there to be no conviction in such a case, the alien must not have entered a plea of guilty or nolo contendere and there must have been no adjudication of guilt or imposition of punishment or restraint by a court. *Id.*

The disposition of the Applicant's 2009 offense under New Jersey's Pretrial Intervention Program did not result in a conviction because she did not enter a plea of guilty nor did she admit sufficient facts to warrant a finding of guilt. Under New Jersey Rules of Court Governing Criminal Practice, participation in the Pretrial Intervention Program does not require an informal admission or entry of a plea of guilt.¹ Accordingly, the Applicant's completion of a Pretrial Intervention Program, which resulted in the dismissal of theft charges against her, is not a conviction under section 101(a)(48)(A) of the Act and does not render her inadmissible for having been convicted of a crime involving moral turpitude.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here the appeal is dismissed as the underlying waiver application is unnecessary.

ORDER: The appeal is dismissed.

Cite as *Matter of M-G-G-*, ID# 13020 (AAO Oct. 19, 2015)

¹ N.J. R. Ct. Crim. R. 3:28, Guideline 4; *see also* *Pinho v. Gonzalez*, 432 F.3d 193, 195 n. 1 (3rd Cir. 2005) (discussing New Jersey's Pretrial Intervention Program).