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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **FEB 07 2008**

IN RE: [REDACTED]

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be dismissed as the applicant is not inadmissible under 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), thus the relevant waiver application is moot.

The applicant, [REDACTED], is a native and citizen of Cuba who was found 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 committing a crime of moral turpitude. The applicant sought a waiver of inadmissibility under section 212(h) of the Act, which the Director denied, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the Director, dated March 27, 2006.*

The AAO will first address the finding of inadmissibility.

Section 212(a)(2) of the Act states that:

(A)(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.

Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines “conviction” for immigration purposes as:

A formal judgment of guilt of the alien 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.

The record reflects that the applicant has the following convictions:

- February 14, 2005 - pled nolo-contendere to violating Fla. Stat. § 322.03(1) (2005);
- February 24, 2005 - pled nolo-contendere to violating Florida statute § 322.03(1) (2005);
- October 30, 2002 - driving while license cancelled, revoked, or disqualified in violation of Fla. Stat. § 322.34(2) (2002).

The applicant has two convictions under Fla. Stat. § 322.03(1) (2005), which statutory provision states that “a person may not drive any motor vehicle upon a highway in this state unless such person has a valid driver's license.”

The statutory provision under Fla. Stat. § 322.34(2) (2002), which the applicant was convicted under, reads as follows:

(2) Any person whose driver's license or driving privilege has been canceled, suspended, or revoked as provided by law, except persons defined in s. 322.264, who, knowing of such cancellation, suspension, or revocation, drives any motor vehicle upon the highways of this state while such license or privilege is canceled, suspended, or revoked, upon:

(a) A first conviction is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A second conviction is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) A third or subsequent conviction is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

The element of knowledge is satisfied if the person has been previously cited as provided in subsection (1); or the person admits to knowledge of the cancellation, suspension, or revocation; or the person received notice as provided in subsection (4). There shall be a rebuttable presumption that the knowledge requirement is satisfied if a judgment or order as provided in subsection (4) appears in the department's records for any case except for one involving a suspension by the department for failure to pay a traffic fine or for a financial responsibility violation.

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992):

[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.

The Notice of Intent to Deny states that the applicant pled no contest to habitually driving without a license on October 19, 2002 and on March 18, 2003, rendering him inadmissible for having a criminal conviction involving moral turpitude.

The AAO finds that the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I). Driving with a suspended license was not found to be a crime involving moral turpitude in *Benitez v. Dunevant*, 198 Ariz. 90, 7 P.3d 99 (2000).

Furthermore, although the applicant has two convictions under Fla. Stat. § 322.03(1) (2005) for driving without a valid driver's license, and a conviction under Fla. Stat. § 322.34(2) (2002) for driving while having

a driver's license or driving privilege that has been canceled, suspended, or revoked, In re Torres-Varella, 23 I&N Dec. 78 (BIA 2001) (en banc), the BIA states that nonturpitudinous conduct is not rendered turpitudinous through multiple convictions for the same offense. Id. at 86. Thus, the applicant's nonturpitudinous conduct of driving without a license is not rendered turpitudinous through multiple convictions for the same offense.

The record establishes that the applicant has not been convicted of a crime of moral turpitude, and that he is not otherwise inadmissible. The applicant's waiver of inadmissibility application is thus moot and the director's March 27, 2006 decision will be withdrawn.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act, the burden of proving eligibility remains entirely with the applicant. See Section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden.

ORDER: The March 27, 2006 decision of the director is withdrawn. The appeal is dismissed as the underlying application is moot.