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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK, NY

Date: JUL 28 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:

[REDACTED]

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 waiver application was denied by the Director, New York, New York and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the director will be withdrawn and the application declared moot.

The applicant is a native and citizen of the Dominican Republic who was arrested numerous times between 1993 and 1995 and was thus found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I) for having been convicted of crimes involving moral turpitude.¹ The applicant has a lawful permanent resident father; he seeks a waiver of inadmissibility in order to reside with his father in the United States.

The director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated July 18, 2005.

On appeal, counsel for the applicant submits a brief, dated August 11, 2005 with referenced exhibits. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2) of the Act states in pertinent part, 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 212(h) of the Act provides, in pertinent part, that:

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

. . . .

- (1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in

¹ The AAO notes that, the director, in her decision to deny the applicant's Form I-601, failed to analyze whether the basis of the applicant's inadmissibility was that his convictions were for crimes involving moral turpitude, as outlined in section 212(a)(2)(A)(i)(I) of the Act and/or based on the fact that there were numerous convictions, as outlined in section 212(a)(2)(B) of the Act, Multiple Criminal Convictions. As the applicant was not sentenced to an aggregate of five years or more, the applicant is not inadmissible under section 212(a)(2)(B) of the Act. Thus, as discussed further below, the issue for the AAO to determine is whether the crimes to which the applicant was convicted are deemed to be crimes of moral turpitude, thus requiring a 212(h) waiver.

extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

The record indicates that the applicant was convicted on five separate occasions, as outlined further below:

1. In February 1993, the applicant was charged with the following: Possession of gambling records in the second degree, a violation of section 225.15 of the New York Penal Code, Promoting gambling in the second degree, a violation of section 225.05 of the New York Penal Code, and Disorderly conduct, a violation of section 240.20 of the New York Penal Code. He pled guilty and paid a fine.
2. In September 1993, the applicant was charged with Possession of a gambling device, a violation of section 225.30 of the New York Penal Code. He pled guilty and paid a fine.
3. In November 1993, the applicant was charged with Disorderly conduct, a violation of section 240.20 of the New York Penal Code. He pled guilty and paid a fine.
4. In November 1994, the applicant was charged with Disorderly conduct, a violation of section 240.20 of the New York Penal Code. He pled guilty and paid a fine.
5. In January 1995, the applicant was charged with Disorderly conduct, a violation of section 240.20 of the New York Penal Code. He pled guilty and paid a fine.

In examining whether a crime involves moral turpitude, the Board of Immigration Appeals [the Board] 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. Assault may or may not involve moral turpitude. Simple assault is generally not considered to be a crime involving moral turpitude.

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.)

With respect to the gambling offenses referenced above, the AAO finds that the Board's decision in *Matter of Gaglioti*, 10 I. & N. Dec. 719 (BIA 1964) is relevant here. In *Matter of Gaglioti*, the Board stated, "...Violations of gaming laws do not ordinarily involve moral turpitude...." *Gaglioti* at 720. As such, pursuant to *Gaglioti*, the AAO finds that the Director erred in concluding that the applicant's gambling offenses subjected him to inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

As for the applicant's disorderly conduct convictions, in order to determine whether they constitute crimes involving moral turpitude, the AAO must examine the statute itself to determine whether the inherent nature of the crime involves moral turpitude. If the statute defines a crime in which moral turpitude necessarily inheres, then the conviction is for a crime involving moral turpitude for immigration purposes, and our analysis ends.

Pursuant to section 240.20 of the New York Penal Code,

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk....

The AAO finds that the Board's decision in *Matter of P*, 2 I. & N. Dec. 117 (BIA 1944) is relevant to this analysis. In *Matter of P*, the Board stated that one of the criteria adopted to ascertain whether a particular crime involves moral turpitude is that it be accompanied by a vicious motive or corrupt mind. "It is in the intent that moral turpitude inheres." *Id.* at 121. In this case, the intent required to be convicted of disorderly conduct is the intent to inconvenience, annoy, alarm or recklessly create a risk. The statute does not outline a requirement that the act of disorderly conduct show a vicious motive or a corrupt mind, as referenced in *Matter of P*. As such, the AAO concludes that the director erred in concluding that the applicant's multiple convictions for disorderly conduct resulted in an inadmissibility finding.

The AAO finds that the director erred in determining that the applicant was inadmissible based on his gambling and/or disorderly conduct offenses. As such, the waiver application is unnecessary and the issue of whether the applicant established exceptional hardship to a qualifying relative pursuant to section 212(h) of the Act is moot and will not be addressed. Accordingly, the appeal will be dismissed, the prior decision of the director is withdrawn and the instant application for a waiver is declared moot.

ORDER: The appeal is dismissed, the prior decision of the director is withdrawn and the instant application for a waiver is declared moot.