

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

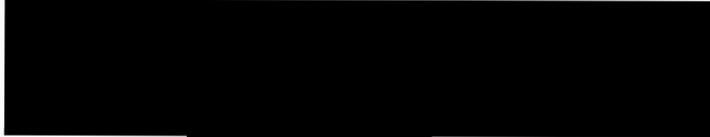
U.S. Department of Homeland Security
20 Massachusetts Ave., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

fl2



FILE:



Office: FRANKFURT, GERMANY

Date: **NOV 28 2008**

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)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Frankfurt, Germany, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the officer in charge will be withdrawn and the application declared moot.

The applicant, a native and citizen of Iran and a lawful permanent resident of the United States since 1993, was 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 a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility in order to reside with his U.S. citizen spouse and children, born in 1980 and 1984.

The officer in charge 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 Officer in Charge*, dated August 10, 2006.

On appeal, the applicant submits the Form I-290B, Notice of Appeal (Form I-290B) and a Certificate of Disposition Indictment, issued by the County Court of the State of New York, Nassau County, dated September 6, 2006. As the applicant asserts on the Form I-290B,

I have been a legal permanent resident since 1993. I am married to a U.S. citizen, live in the U.S., and have not abandoned my residency. My Green Card is in the possession of the U.S. Consulate in Dubai, U.A.E.

Secondly, my conviction in April 28, 2003 is viewed as a 'VIOLATION' under New York criminal law. It is not considered a misdemeanor or a felony. I was arrested for one day and have spent no jail time since that date. In addition, I have already paid a fine and surcharge.... This conviction does not involve moral turpitude.

See Form I-1290B, dated September 6, 2006. 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 extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

The record indicates that in April 2003, the applicant was convicted of Harassment in the Second Degree, a violation of section 240.26 of the New York Penal Code, based on a February 2003 incident and arrest. He was granted conditional discharge and placed under an order of protection for one year. In addition, he was ordered to pay a fine and a surcharge. No prison sentence was imposed.

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.)

Regarding the applicant's harassment conviction, in order to determine whether it constitutes a crime 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.

Section 240.26 of the New York Penal Code states, in pertinent part:

A person is guilty of harassment in the second degree when, with intent to harass, annoy or alarm another person:

1. He or she strikes, shoves, kicks or otherwise subjects such other person to physical contact....

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 harassment in the second degree is the intent to harass, annoy, or alarm another person. The statute does not outline a requirement that the act of harassment show a vicious motive or a corrupt mind, as referenced in *Matter of P*. As such, the AAO concludes that the officer in charge erred in concluding that the applicant's conviction for harassment in the second degree resulted in an inadmissibility finding.

The AAO finds that the officer in charge erred in determining that the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act based on his harassment conviction. As such, the waiver application is unnecessary and the issue of whether the applicant established extreme 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 officer in charge is withdrawn and the instant application for a waiver is declared moot.

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