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**U.S. Department of Homeland Security**  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**

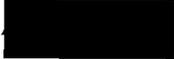


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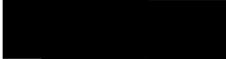
Date:

**APR 27 2012**

Office: NEW YORK

FILE: 

IN RE:

Applicant: 

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the district director for further proceedings consistent with this decision.

The AAO notes that the applicant filed the present appeal with the representation of an attorney, [REDACTED]. On February 22, 2012, [REDACTED] was suspended from practice for the Board of Immigration Appeals, the Immigration Courts, and the Department of Homeland Security of which U.S. Citizenship and Immigration Services (USCIS) and the AAO are a part. Accordingly, [REDACTED] is not eligible to represent the applicant in the present matter, and the applicant is treated as unrepresented. It is further noted that the applicant is not prejudiced by [REDACTED] suspension, and the applicant is free to seek counsel from another authorized representative in responding to this request for evidence and in subsequent matters before USCIS and the AAO.

The applicant is a native and citizen of Senegal 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 been convicted of crimes involving moral turpitude. He seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife.

The district director denied the Form I-601 application for a waiver, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director*, dated July 27, 2009.

On appeal, the applicant asserts that he has shown that his wife will suffer extreme hardship should the present waiver application be denied. *Statement from Counsel with Form I-290B*, dated August 25, 2009.

The record contains, but is not limited to: a statement from the applicant's former counsel; statements from the applicant and his wife; documentation in connection with the applicant's criminal history; tax and financial records for the applicant and his wife; and documentation of the applicant's wife's employment. 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.

(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.)

The record shows that the applicant has been convicted of multiple offenses, including third-degree trademark counterfeiting under New York Penal Law § 165.71 for his conduct on or about November 18, 2003, and five counts of disorderly conduct under New York Penal Law § 240.20 for his conduct between 2002 and 2007. The applicant's offenses of disorderly conduct under New York Penal Law § 240.20 do not constitute crimes involving moral turpitude. The applicant's remaining conviction for third-degree trademark counterfeiting under New York Penal Law § 165.71, assuming it is the only such conviction, meets the "petty offense" exception under section 212(a)(2)(A)(ii)(II) of the Act. Specifically, the applicant faced a maximum of one year of incarceration for this offense, and he received a sentence of three years of probation with no jail time. Accordingly, the record as presently constituted does not show that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude.

However, the record also shows that the applicant was arrested on or about January 23, 2008, and again charged with third-degree trademark counterfeiting under New York Penal Law § 165.71. The applicant

has not presented any explanation or documentation regarding this charge, and the AAO is unable to determine whether it led to a conviction. It is noted that on three occasions in 2005, 2006, and 2007 the applicant was charged with a violation of New York Penal Law § 165.71, and he ultimately pled guilty to the lesser charge of disorderly conduct under New York Penal Law § 240.20, which we determine is not a crime involving moral turpitude. We are unable to determine whether the applicant's January 23, 2008 arrest for a violation of New York Penal Law § 165.71 resulted in dismissal, a plea to a lesser charge that is not a crime involving moral turpitude, or a conviction for a crime involving moral turpitude that, along with the applicant's other trademark counterfeiting conviction, serves as a basis for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

The matter will be remanded to the district director to resolve the question of whether the applicant was convicted of an additional crime involving moral turpitude that may establish inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. If the district director finds that the applicant has only been convicted of the crime involving moral turpitude discussed above, the single violation of New York Penal Law § 165.71, the Form I-601 application shall be deemed unnecessary. Should the district director find that the applicant has been convicted of an additional crime involving moral turpitude that renders him inadmissible, the district director shall issue a new decision addressing the merits of the applicant's Form I-601 application, affording the applicant the opportunity to present updated and/or additional evidence of hardship and in support of a favorable exercise of discretion. If that decision is adverse to the applicant, the district director shall certify that decision to the AAO for review.

**ORDER:** The matter is remanded to the district director for further proceedings consistent with this decision.