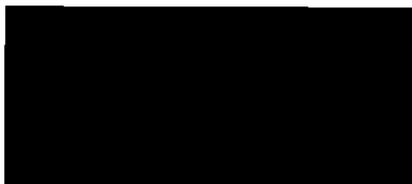


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
*Office of Administrative Appeals*  
20 Massachusetts Avenue, N.W., MS 2090  
Washington, DC 20529-2090



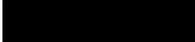
**U.S. Citizenship  
and Immigration  
Services**



H2

DATE **AUG 28 2012**

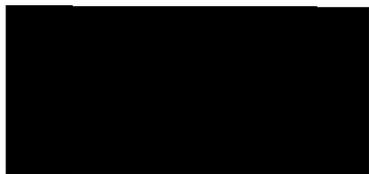
OFFICE: LONDON

FILE: 

IN RE: MAURICE DOHERTY

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:

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.

Thank you,

for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, London, England, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Ireland 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 committed a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his U.S. citizen spouse.

The District Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and that the applicant did not merit an exercise of discretion, and denied the application accordingly. The District Director also determined that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), for gaining entry to the United States through fraud or misrepresentation. The applicant failed to acknowledge his conviction for a crime involving moral turpitude when he entered the United States pursuant to the Visa Waiver Program. *See Decision of the District Director*, dated June 18, 2010.

On appeal, counsel for the applicant asserts that the applicant did not intentionally misrepresent his criminal history on his Form I-94W, but rather did not understand the meaning of “moral turpitude.” Counsel contends that the applicant’s crime of moral turpitude conviction took place over fifteen years ago and that the applicant has demonstrated rehabilitation. Counsel further contends that the applicant’s spouse would suffer extreme financial, emotional, and physical hardship if the applicant’s waiver application is not approved.

In support of the waiver application and appeal, the applicant submitted letters from the applicant and his spouse, medical documentation concerning the applicant’s spouse and her mother, letters of support, identity documents, evidence concerning the applicant’s and his spouse’s employment, photographs, financial documents, conviction documents, background information concerning country conditions in Ireland. The entire record was reviewed and considered in rendering a decision on the appeal.

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.)

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a “realistic probability, not a theoretical possibility,” that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where, at the time of the proceeding, an “actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien’s own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude.” *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, “the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude.” 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

In addition to other convictions, the record reflects that the applicant was convicted in the Newtown Cunningham Court, Ireland, on November 24, 1981, of larceny, receiving a suspended sentence of six months incarceration. The director found the applicant to be inadmissible for having been convicted of a crime involving moral turpitude. The applicant has not disputed this determination, at least as regarding the larceny conviction, on appeal. As the applicant has not disputed inadmissibility on appeal and the record does not show the director’s finding of inadmissibility based on the larceny conviction to be erroneous, the AAO will not disturb the director’s inadmissibility finding.<sup>1</sup>

The director also found the applicant to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for procuring entry to the United States by fraud or willful misrepresentation. The applicant applied for entry to the United States through the Visa Waiver Program (VWP) on eight separate dates: September 10, 2006; November 12, 2006; February 8, 2007; March 25, 2007; July 25, 2007; March 7, 2008; August 23, 2008; and November 23, 2008. On each occasion, the applicant stated on his Form I-94W that he had never been arrested for or convicted of a crime involving moral turpitude. Counsel for the applicant asserts that the applicant did not realize that he had been convicted of a crime of moral turpitude because it is such a vague legal term and he did not have the benefit of counsel when responding. The applicant, likewise, states that he did not knowingly misrepresent his criminal history in applying for entry to the United States because he did not know the definition of a crime involving moral turpitude.

U.S. Citizenship and Immigration Services interprets the term “willfully” as knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the factual claims are true. In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *See generally Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956). To be willful, a misrepresentation must be made with knowledge of its falsity. 7 I&N Dec. at 164. To determine whether a misrepresentation was willful, we examine the circumstances as

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<sup>1</sup> Accordingly, the AAO will not address whether any of the applicant’s other criminal convictions should be characterized as crimes involving moral turpitude. It is noted that the documents submitted concerning the applicant’s criminal background are incomplete due to the convicting court’s inability to provide the applicant’s full record of conviction.

they existed at the time of the misrepresentation, and we “closely scrutinize the factual basis” of a finding of inadmissibility for fraud or misrepresentation because such a finding “perpetually bars an alien from admission.” *Matter of Y-G-*, 20 I&N Dec. 794, 796-97 (BIA 1994) (citing *Matter of Shirdel*, 19 I&N Dec. 33, 34-35 (BIA 1984)); *see also Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28-29 (BIA 1979). With relevance to the present matter, we acknowledge that the term “moral turpitude” is not in common usage, and it is unlikely that the average person is aware of its meaning and application in U.S. immigration law. Nevertheless, as the burden is on the applicant to establish that he or she is not inadmissible, the applicant has the burden of showing that any misrepresentation was, in fact, not willful. *See* section 291 of the Act, 8 U.S.C. § 1361.

There is no indication that this applicant was aware that he had committed a crime involving moral turpitude at the time he submitted his I-94W forms. In fact, both the applicant and his spouse have submitted statements recalling that the applicant was confused about the crime involving moral turpitude query on his Form I-94W, but answered to the best of his ability at that time. The record contains a Form DS-230, Application for Immigrant Visa and Alien Registration, prepared with the benefit of legal counsel and signed by the applicant on September 19, 2009. On this form, the applicant states that he has been convicted of a crime involving moral turpitude and provides a comprehensive list of his convictions. It is noted that the applicant’s visits to the United States pursuant to VWP all took place prior to the submission of this Form DS-230. The record supports the applicant’s assertion that he did not willfully misrepresent his pertinent criminal record on his I-94W forms. Accordingly, the AAO finds that the applicant did not willfully misrepresent a material fact to procure entry to the United States and is not subject to inadmissibility pursuant to section 212(a)(6)(C) of the Act.

Section 212(h) of the Act provides, in pertinent part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . if –

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status.

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(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 [Secretary] 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 . . . .

As the applicant's crime of moral turpitude conviction took place on November 24, 1981, well over fifteen years ago, he is eligible to apply for a waiver pursuant to section 212(h)(1)(A) of the Act. On appeal, counsel for the applicant asserts that the applicant has maintained a clean criminal record since 1993, aside from a traffic violation. Counsel contends that the applicant has expressed remorse for his criminal history and that his life has changed in the years since.

The applicant has an extensive criminal record, including a 1975 conviction for poaching, a 1976 conviction for assault, a 1976/77 conviction for malicious damage, a 1981 conviction for larceny, a 1982 conviction for assault, a 1982 conviction for driving under the influence, a 1982 conviction for technical assault, a 1993 conviction for malicious damage, and a 2009 conviction for driving without a vehicle test certificate and insurance. As stated by counsel, the applicant, aside from a traffic violation, has not had any criminal contacts for nearly two decades.

The applicant submitted a letter expressing his remorse for the decisions that led to his criminal convictions. The applicant further states that he has changed as a person since entering into marriage and suffering the loss of his oldest child. The applicant's spouse submitted a letter asserting that the applicant has improved her life in numerous ways, including renovating her home and performing household chores that are difficult for the applicant's spouse, due to her medical issues. The record also contains a letters of support from the applicant's spouse's mother, the applicant's employer/landlord who has been acquainted with the applicant for eight years, and a pastor. The letters of support submitted concerning the applicant attest to his trustworthy and kind character and the level of his maintenance skills. Based on the record, the AAO finds that the applicant has demonstrated rehabilitation and that his admission to the United States would not be contrary to the national welfare, safety, or security of the United States pursuant to section 212(h)(1)(A) of the Act

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.