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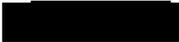
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U.S. Department of Homeland Security  
U.S. Immigration and Citizenship Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



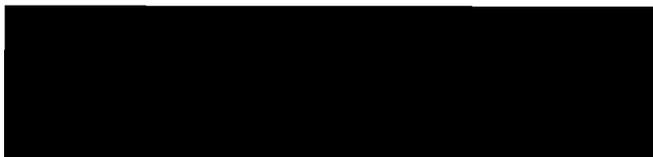
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DATE: Office: CHICAGO, IL FILE: 

IN RE: **FEB 02 2012** Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h), 8 U.S.C. § 1182(h) of the Immigration and Nationality Act.

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the waiver application is moot.

The applicant is a native and citizen of Honduras 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.

The district director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. *District Director's Decision*, dated July 31, 2006.

On appeal, the applicant details the hardship that his mother is experiencing. *Form I-290*, received August 14, 2006.

The record includes, but is not limited to, counsel's brief, the applicant's statement, statements from family members, medical and financial records, and country conditions information. The entire record was reviewed and considered in arriving at 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.

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.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709. However, this “does not mean that the parties would be free to present any and all evidence bearing on an alien’s conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself.” *Id.* at 703.

The record reflects that the applicant was convicted of “fraudulent identification card” in violation of 15 ILCS 335/14B(b)(1) on October 1, 2004.

15 ILCS 335/14B(b)(1) provides, in pertinent parts:

b) It is a violation of this Section for any person:

1. To knowingly possess, display, or cause to be displayed any fraudulent identification card...

The AAO is unaware of any published federal cases addressing whether the crime of fraudulent identification card under Illinois law is a crime of moral turpitude. The AAO notes that the statute is divisible and that the complaint in the applicant’s case reflects that he was convicted of having knowingly possessed a fraudulent resident alien card. He was not convicted of displaying the card (i.e. using it). In *Matter of Serna*, 20 I&N Dec. 579 (BIA 1992), the BIA held that “possession of an altered immigration document with the knowledge that it was altered, but without its use or proof

of any intent to use it unlawfully, is not a crime involving moral turpitude.” As such, the applicant’s conviction for possessing a fraudulent identification card is not a crime involving moral turpitude. As the applicant has not been convicted of a crime involving moral turpitude, he is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act and does not need to file a section 212(h) waiver. The appeal will be dismissed as the waiver application is moot.

**ORDER:** The appeal is dismissed as the waiver application is moot.