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



H2

Date:

Office: LOS ANGELES

FILE:



IN RE: **FEB 13 2012**
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.

Thank you.

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The previous decision of the Field Office Director will be withdrawn and the application declared moot. The matter will be returned to the Field Office Director for continued processing.

The applicant is a native and citizen of the Philippines. The director stated that the applicant was inadmissible under 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 a crime involving moral turpitude. The director indicated that the applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, the applicant's spouse asserts that he would experience extreme hardship if the waiver application is denied.

We will first address the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude.

The record reflects that [REDACTED] the applicant pled *nolo contendere* to one count of forge credit card to defraud in violation of section 484 of the California Penal Code, and was sentenced to 36 months of probation and 48 hours of community service.¹ [REDACTED], pursuant to California Penal Code § 17(b), the judge deemed the applicant's offense a misdemeanor and set aside the applicant's plea of guilty or conviction and entered a plea of not guilty, and dismissed the case pursuant to California Penal Code § 1203.4.

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 . . . 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-
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 - (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

¹ Although the applicant was charged with multiple counts of this offense, the record shows that she pled to and was convicted of only one count.

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 applicant does not dispute on appeal that the crime of which she was convicted involves moral turpitude, rendering her inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

However, we find that the petty offense exception under section 212(a)(2)(A)(ii)(II) of the Act applies in the instant case. That section conveys that the petty offense exception applies where an alien committed only one crime and the maximum penalty possible for that crime did not exceed imprisonment for one year, and the alien was not sentenced to imprisonment in excess of six months. The applicant has only one criminal conviction, violation of section 484 of the California Penal Code. The criminal statute under which the applicant was convicted is a “wobbler,” as the offense can be punished either as a felony or as a misdemeanor. In cases where a wobbler is involved, California law classifies an offense as a misdemeanor when the defendant is not sentenced to state prison. See Cal. Penal Code § 17(b)(1).² In our case, the applicant was not sentenced to jail. Section 19 of the California Penal Code states, in pertinent part: “every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars (\$1,000), or by both.” Therefore, because the applicant’s offense was classified a misdemeanor, her offense falls within the petty offense exception, and she is thereby not inadmissible under section 212(a)(2)(A)(i)(I) of the Act. See, e.g., *Garcia-Lopez v. Ashcroft*, 334 F.3d 840 (9th Cir. 2003)

Thus, the waiver application is not necessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to the Act is moot and will not be addressed. Accordingly, the decision of the Field Office Director is withdrawn, the instant application for a waiver is declared moot, and the appeal is dismissed.

ORDER: The decision of the Field Office Director is withdrawn, the instant application for a waiver is declared moot, and the appeal is dismissed. The Field Office Director shall continue processing the adjustment application (Form I-485) accordingly.

² Section 17(b)(1) of the California Penal Code states, in pertinent part:

When a crime is punishable, in the discretion of the court, by imprisonment in the state prison or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances:

- (1) After a judgment imposing a punishment other than imprisonment in the state prison.