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U.S. Citizenship
and Immigration
Services

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FILE: [redacted] Office: LOS ANGELES Date: AUG 26 2008

IN RE: [redacted]

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:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of the Mexico 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 crimes involving moral turpitude. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen daughter, 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 children.

The I-130 petition was approved on April 2, 2003. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on April 25, 2001. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) on or about September 8, 2003.

The District Director determined that the applicant had been convicted of three crimes involving moral turpitude and concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of District Director*, dated August 31, 2005.

On appeal, counsel asserts that the applicant's first two convictions—Burglary of a Vehicle, a violation of section 30.04 of the Texas Penal Code (T.P.C.), in 1981, and Disorderly Conduct (Prostitution) in violation of section 647(B) of the California Penal Code (C.P.C.) in 1987—occurred more than 15 years ago and can be waived under section 212(h)(1)(A) of the Act, rather than section 212(h)(1)(B). *Counsel's Brief* at 2. Counsel asserts that the evidence shows that the applicant's admission would not be contrary to the national welfare, safety, or security of the United States as required for a waiver of inadmissibility under section 212(h)(1)(A). *Id.* Counsel also contends that the applicant's conviction of March 15, 2002 for again violating C.P.C. § 647(B) qualifies for the petty offense exemption to inadmissibility under section 212(a)(2)(A)(ii) of the Act because it was a misdemeanor, the applicant was sentenced to less than 6 months, and the applicant successfully completed probation. *Id.*

Counsel further states that, even if the applicant requires a waiver of inadmissibility under section 212(h)(1)(B), he has demonstrated that the qualifying relatives, his four U.S. citizen children, will experience extreme hardship if the waiver application is denied. *Counsel's Brief* at 2-10. Counsel contends that the applicant is the sole breadwinner for his family, though his two youngest children live with the applicant's ex-wife in Texas. *Id.* at 4. Counsel states that the applicant continues to provide necessary financial support to his children, support that he would not be able to provide from any meager income he might earn in Mexico. *Id.* at 4-7. Counsel further asserts that the applicant plays an active role in his children's lives by spending time with them and caring for his grandchildren. *Id.* at 4-7. Counsel states that the applicant feels remorse for his crimes and has demonstrated that he has learned from his mistakes by exhibiting good character. *Id.* at 3. Counsel contends that the other hardship factors—age and length of residence in the U.S., family ties in the United States, health—also weigh in the applicant's favor. *Id.* at 7-9.

The record contains, among other documents, statements from the applicant and his daughters and h, birth and marriage records; family photographs; proof of child support payments; proof of the

applicant's business license; a letter from the pastor of the applicant's church; receipts for charitable work and donations by the applicant; a U.S. State Department country report for Mexico; automobile insurance documents; school transcripts and other documents for the applicant's daughter [redacted]; and tax and social security records. 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) In general.— . . .[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-
>
> (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 record shows that the applicant has at least four convictions, three of which the district director found to be crimes involving moral turpitude. The applicant was convicted on August 28, 1981 in District Court for the Country of El Paso, Texas, of Burglary of a Vehicle, a violation of T.P.C. § 30.04, and sentenced to probation for a period of three years. The applicant was convicted on October 2, 1987 in the Municipal Court of Los Angeles, California of Disorderly Conduct (Prostitution) in violation of C.P.C. § 647(B) and ordered to pay a fine. The applicant was again convicted on March 15, 2002 in the Municipal Court of Los Angeles, Van Nuys Judicial District, Los Angeles County, California of Disorderly Conduct (Prostitution) in violation of C.P.C. § 647(B). The applicant's sentence was suspended and he was placed on probation for a period of two years.

The applicant was also convicted on September 24, 1987 in the Municipal Court of Los Angeles, Van Nuys Judicial District, County of Los Angeles, California of Reckless Driving in violation of the section 23103 of the California Vehicle Code. The applicant's sentence was suspended and he was placed on probation for a period of three years.

The AAO notes that 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 crime of burglary, particularly where intent to commit theft or larceny is an element of the crime, has been held to be a crime involving moral turpitude. *See Matter of R-*, 1 I. & N. Dec. 540 (BIA 1943). T.P.C. § 30.04, as of the date of the applicant's conviction, provided that "[a] person commits an offense if, without the effective consent of the owner, he breaks into or enters a vehicle or any part of a vehicle with intent to commit any felony or theft."

Although crimes relating to the practice of prostitution, such as maintaining a house of prostitution or securing another for employment as a prostitute, have been found to be crimes involving moral turpitude, the AAO is unaware of any legal precedent holding that solicitation of prostitution is a crime involving moral turpitude under the Act. *See, e.g., Matter of W-*, 4 I. & N. Dec. 401 (C.O. 1951); *Matter of A-*, 5 I. & N. Dec. 546 (1953) (Knowingly permits premises to be used as a brothel); *Matter of Lambert*, 11 I&N Dec. 340 (BIA 1965) (securing another for prostitution). Section 647 of the C.P.C. provides, in pertinent part,

> Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:
>
> > (b) Who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an *7 acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

The BIA recently addressed solicitation of prostitution under C.P.C. § 647(B), but declined to reach the issue of whether violation of this statute is crime involving moral turpitude because the appellant would have been eligible for the "petty offense" exemption found in section 212(a)(2)(A)(ii)(II) of the Act. *Matter of Gonzalez-Zoquiapan*, 24 I&N Dec. 549, 554 (BIA June 25, 2008). The BIA held that solicitation of prostitution under

C.P.C. § 647(B) does no render an alien inadmissible under section 212(a)(2)(D)(ii) of the Act because the word "procure" as used in the statute refers to the procurement of a prostitute for another. *Id.* at 551. In the absence of legal authority to the contrary, the AAO does not find that mere solicitation of prostitution under C.P.C. § 647(B) involves a "vicious motive or corrupt mind" and is "conduct that shocks the public conscience as being inherently base, vile, or depraved" such that it must be considered a crime involving moral turpitude. Accordingly, the applicant is not inadmissible as a result of violating of C.P.C. § 647(B), and the district director's findings regarding these convictions is withdrawn.

The applicant's 1981 burglary conviction is a crime involving moral turpitude, but inadmissibility resulting from this conviction can be waived under section 212(h)(1)(A) of the Act rather than 212(h)(2)(B).

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

> (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 [Secretary] that –
>
> (i) . . . 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 . . .

The evidence in the record demonstrates that the applicant is self-employed in the construction and concrete industry and that he provides financial support to his children. The applicant's two adult daughters indicate that they are close to the applicant, and that he assists them in raising their children. While the applicant's past criminal activities and unlawful presence cannot be condoned, it is noted that the applicant has no criminal record since his conviction in 2002. Also, the applicant has not been convicted for burglary or any similar crime since his 1981 burglary conviction, which demonstrates that he has been rehabilitated. Accordingly, the AAO finds that the applicant's admission to the United States would not be contrary to the national welfare, safety, or security of the United States and that the alien has been rehabilitated of the activities that have rendered him inadmissible.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. *See* 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.