U.S. Department of Homeland Security
20 Mass. Avenue, N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

URBINA

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IN RE: URBINA

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

ON BEHALF OF APPLICANT:

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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 District Director, Los Angeles, California denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, as the waiver application is moot.

The applicant, Urbina (Mr. Fernandez), is a native and citizen of 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), as an individual who has been convicted of a crime involving moral turpitude.

The district director found that the applicant was inadmissible for having been convicted of crimes involving moral turpitude based on several criminal convictions in the state of California. The district director further found that the applicant failed to establish extreme hardship to his U.S. citizen (USC) wife and USC children and denied the application. *Decision of the district director*, dated May 12, 2005.

On appeal, counsel for the applicant asserts that the applicant has only been convicted of one crime involving moral turpitude and that the conviction qualifies for the petty offense exception. *Notice of Appeal, I-290B* dated June 13, 2005.

The record includes, but is not limited to, the applicant's record of conviction. 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 part, that:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
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> > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible. . . .
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> (ii) Exception.-Clause (i)(I) shall not apply to an alien who committed *only one crime* if-
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> . . . .
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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 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 district director did not specify the crimes and or convictions that made Mr. Fernandez inadmissible. The record reflects that on April 15, 1992, Mr. Fernandez pled guilty to tampering with a vehicle, under Section

10852 of the California Vehicle Code.[1] He was sentenced to 7 days in jail suspended and was placed on probation for 3 years. On March 26, 1997, Mr. Fernandez pled guilty to misdemeanor infliction of corporal injury on spouse under Section 273.5(A) of the California Penal Code. He was sentenced to 60 days in jail and placed on probation for 3 years.

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.

Section 10852 of the California Vehicle Code states that:

> No person shall either individually or in association with one or more persons, willfully injure or tamper with any vehicle or the contents thereof or break or remove any part of a vehicle without the consent of the owner.

Mr. Fernandez' conviction under the California Vehicle Code is analogous to offenses that the Board of Immigration Appeals (BIA) has found do not involve moral turpitude. *See Matter of N-*, 8 I&N Dec. 466 (BIA 1959)(finding that, absent proof of intent, Delaware convictions for malicious mischief did not necessarily involve base act contrary to moral standards); *Matter of C-*, 2 I&N Dec.716 (BIA 1946)(Canadian conviction for malicious mischief did not necessarily involve moral turpitude because offense did not contain a requirement of malicious intent); and *Matter of B-*, 2 I&N Dec. 867 (BIA 1947)(Canadian conviction for malicious mischief wherein intent may have been negligent or reckless did not involve moral turpitude). According to the BIA, conviction for destruction of property might be considered a crime involving moral turpitude if the statute required a finding that the respondent, with malice, intended to injure, break or destroy the property of another for a bad or evil purpose. Here, a conviction for tampering with a vehicle is not a crime involving moral turpitude. While the statute requires an element of intent, or a finding that the respondent "willfully injured or tampered with a vehicle or the contents of a vehicle", it does not include any language of malicious, bad, or evil intent. Willfully tampering with a vehicle or its contents does not necessarily indicate a malicious intent. In addition, the statute can include an action that requires no intent, i.e., breaking or removing any part of a vehicle without consent of the owner. This could conceivably include behavior that is accidental or reckless. This is not conduct that is inherently base, vile or depraved and is therefore not a crime involving moral turpitude.

Based on a thorough reading of the record of conviction and the statute, the AAO finds that Mr. Fernandez' conviction for tampering with a vehicle under the California Penal Code is not a crime involving moral turpitude as it may include an action that does not require malicious intent, much like the crime in *Matter of N-, Matter of C-, and Matter of B-*.

Mr. Fernandez' 1997 spousal abuse conviction is a crime involving moral turpitude, but this was a misdemeanor conviction. Mr. Fernandez was sentenced to 60 days in jail and the maximum penalty which

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[1] Mr. Fernandez was charged with an additional and separate offense on October 4, 1992. This charge was adjudicated in juvenile court and is not relevant to these proceedings. He was also arrested and charged on March 25, 1998, for a separate offense, but that charge was dropped because of insufficient evidence.

could have been imposed did not exceed one year. Therefore, the conviction qualifies for the petty offense exception under 212(a)(2)(C)(ii)(II) and Mr. Fernandez is not inadmissible.

Based on the record, the AAO finds that the applicant did commit a single crime involving moral turpitude but qualifies for the petty offense exception and is not inadmissible under section 212(a)(2)(A) of the Act. The waiver filed pursuant to section 212(h) of the Act is therefore moot.

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. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant is not required to file the waiver. Accordingly, the appeal will be dismissed as moot.

ORDER: The appeal is dismissed.