4 I. & N. Dec. 401 (BIA), Interim Decision 367, 1951 WL 7025

United States Department of Justice

Board of Immigration Appeals

IN THE MATTER OF W-----

In EXCLUSION Proceedings

A-7080566

*Decided by the Central Office June 1, 1951*

****1 *401 Moral turpitude-Violation of city ordinance as constituting a crime or misdemeanor-Crimes involving moral turpitude, Washington, prostitution.**

(1) Violation of an ordinance of the city of Seattle, Wash., relating to prostitution deemed to be a crime or misdemeanor involving moral turpitude within the meaning of the Immigration Act of February 5, 1917, as amended.

**EXCLUDED:**
Act of 1924-No immigration visa.

Executive Order 8766-No passport.

Act of 1917-Admits the commission and convicted of crime involving moral turpitude, to wit: Practicing prostitution.

**BEFORE THE CENTRAL OFFICE**

**Discussion:** The record relates to a native and citizen of Canada who applied for admission into the United States at Vancouver, British Columbia, and was held for examination before a board of special inquiry. At the conclusion of the hearing on June 27, 1950, she was found to be inadmissible on the grounds stated above and she has appealed from such decision.

The record discloses that appellant was legally admitted to the United States for permanent residence at Blaine, Wash., on December 14, 1948, under Public Law 271. On September 29, 1949, deportation proceedings were instituted against her on the ground that she was deportable under the act of February 5, 1917, in that she had been found practicing prostitution after her entry. She was granted voluntary departure and left the United States on October 4, 1949. Her present application for admission into the United States is for permanent residence.

Appellant was convicted on September 23, 1949, after a plea of guilty, in the Municpal Court of Seattle, Wash., of the violation of Seattle, Wash., city ordinance 73095, section 1 (practicing prostitution). Section 1 of the ordinance named provides that: "It shall be unlawful to commit or offer or agree to commit any act of prostitution, ***402** assignation, or any other lewd or indecent act." The violation of the ordinance was punishable by imprisonment in the city jail not to exceed 90 days or by a fine not exceeding $300 or by both such fine and imprisonment. Appellant was sentenced to pay a fine of $100.

It is well established that the crime of practicing prostitution involves moral turpitude. It has been held that the offense of soliciting prostitution in the State of Washington in violation of section 2688, volume IV, Remington's Revised Statutes of Washington, Annotated (1931) is an offense involving moral turpitude, (*Matter of P-----,* A-6365969 (B. I. A., 1947)). The

  

pertinent provision of the statute involved in that case was "Every * * * (3) person practicing or soliciting prostitution * * * is a vagrant." However, the record in this case does not disclose that appellant was convicted of a violation of the Washington penal code but was convicted of violation of an ordinance of the city of Seattle, Wash. The question therefore presented in this case is whether the offense committed by appellant for which she was convicted is a felony or other crime or misdemeanor within the contemplation of the Immigration Act of February 5, 1917.

**2 In the *Matter of D-----,* A-6171077 (B. I. A., 1947), it was held that a violation of an ordinance of the city of Rochester, N. Y., was not a crime, because the charter of Rochester provided in part that "A violation of an ordinance of the common council or said commissioner shall not be a crime but the prosecution therefor shall be a criminal procedure." In that case the alien was charged with violation of the city ordinance in that she was an inmate of a house of ill-fame, a place for persons to visit for the purpose and practice of unlawful sexual intercourse. In the *Matter of C-----,* A-5536201, 2, I. & N. Dec. 367 (B. I. A., 1945), a violation of a city ordinance of the city of Buffalo, N. Y., which ordinance was described as "disorderly conduct" and related to prostitution or unlawful sexual intercourse, was also held not to be a felony or other crime or misdemeanor within the meaning of the act of February 5, 1917.

In the *Matter of F-----,* A-2080177 (B. I. A., 1947), a violation of a municipal ordinance of the city of Miami, Fla., was held to be a crime within the meaning of the Immigration Act of 1917. The ordinance involved provided that "It shall be unlawful to commit, within the limits of the city of Miami, any act which is or shall be recognized by the laws of the State of Florida as a misdemeanor * * * and the punishment shall be "by the same penalty as is therefore provided by the laws of the State of Florida." In the *Matter of R-----,* A-5679593 (B. I. A., 1947), a violation of an ordinance of the city of Massillon, Ohio, which dealt with the subject of nuisances and houses of ill-fame was held to be a crime within the meaning of the Immigration Act of 1917, the particular offense committed by the alien ***403** in that case having been the operation of a house of ill-fame for prostitution. An examination of the constitutional and statutory provisions of the State of Ohio failed to disclose any provisions in the city charter defining the violation of a city ordinance as not being a crime; the provisions of the municipal ordinance of Massillon when compared with the provisions of the State statute disclosed that the prohibitions contained in the ordinances clearly came within the scope of a State statute dealing with substantially the same subject matter. It was concluded in that case that an offense created by a municipal ordinance must be regarded as a crime, if it constituted a crime under the general law of the State.

Research has failed to disclose any statutory law or any court decisions defining the violation of an ordinance of a city in the State of Washington as not being a crime. Nor does a perusal of the charter of the city of Seattle (presented to the voters for ratification at the election held on March 12, 1946, and adopted) disclose any provision defining the violation of a city ordinance as not being a crime. Under the enabling acts relating to cities of the first class, to which class Seattle belongs, the city of Seattle has the power to "make regulations necessary for the preservation of public morality, health, peace, and good order within its limits and to provide for the arrest, trial, and punishment of all persons charged with the violating of any of the ordinances of said city but punishment shall in no case exceed the punishment provided by the laws of this State for misdemeanors." Section 8966, volume X, Remington's Revised Statutes of Washington, Annotated (1931); *Brennan* v. *Seattle* (151 Wash. 665, 668 (1929)). Section 14, article IV of the charter of the city of Seattle provides that "the city council shall have power by ordinance and not otherwise * * * to make all such local, police, sanitary, and other regulations as are not in conflict with the laws of the State." Therefore it appears that the ordinance involved in the instant case is a proper exercise of the police power invested in the city of Seattle. It is not in conflict with the laws of the State of Washington, the offense of practicing prostitution being a violation of the State law, as set forth in section 2688, volume IV, Remington's Revised Statutes of Washington, Annotated (1931) mentioned above. Section 2253, Remington's Revised Statutes of Washington provides that "a crime is an act or omission forbidden by law and punishable upon conviction * * * imprisonment, fine, or other penal discipline."

**3 It is therefore concluded that this case comes within the doctrine enunciated in the *Matter of R----- (supra),* as distinguished from the cases in the *Matter of D-----* and *Matter of C----- (supra).* Since the city ordinance was a valid exercise of the police power of the city of Seattle and the act committed by appellant was forbidden by law ***404** and punishable upon conviction by imprisonment, fine, or both, it must be concluded that the violation of the city ordinance involved is a felony or other crime or misdemeanor within the contemplation of the Immigration Act of February 5, 1917. Consequently appellant was convicted of

  

a felony or other crime or misdemeanor involving moral turpitude and she was properly found to be excludable on the criminal ground shown above. The record does not establish that she is entitled to any discretionary relief. The action of the Board of special inquiry should therefore be affirmed.

**Order:** It is ordered that the excluding decision of the board of special inquiry be affirmed.

Footnotes

Note 1. *Editor's note.*-Similarly, a violation in 1949 of sec. 41.05 of Ordinance No. 77000 of the Los Angeles, Calif., code relating to prostitution-Offering held to be a crime or misdemeanor involving moral turpitude within the meaning of the Immigration Act of February 5, 1917, as amended. *Matter of G-----,* A-6990751, C. O., December 20, 1951.
Likewise, a violation in 1950 of ordinance 2686 (new series), sec. 1 of the city of San Diego, Calif., relating in part to the commission of an indecent act as well as prostitution held to be a crime or other misdemeanor within the meaning of the Immigration Act of February 5, 1917, as amended. However, under facts in case, which involved the commission of an indecent act, the offense was found not to involve moral turpitude. *Matter of T----- C-----,* A-6703077, C. O. February 26, 1952.

4 I. & N. Dec. 401 (BIA), Interim Decision 367, 1951 WL 7025