



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 21402608

Date: JULY 25, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a citizen of Georgia, has applied to adjust status to that of a lawful permanent resident (LPR) and seeks a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h), for having been convicted of crimes involving moral turpitude. The Director of the Philadelphia, Pennsylvania Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the Applicant did not establish, as required, that denial of admission would result in extreme hardship to her qualifying relatives. The Director further concluded that the Applicant did not warrant a favorable exercise of discretion. We summarily dismissed a subsequent appeal because although the Applicant indicated that she would submit a brief and/or additional evidence to our office within 30 days of filing the appeal, the record did not include a supplemental brief or evidence at the time of adjudication. We therefore determined that the Applicant did not specify or identify an erroneous conclusion of law or statement of fact in the Director's decision.

The matter is now before us on a motion to reopen and reconsider. On motion, the Applicant asserts that she has established eligibility for the benefit sought.<sup>1</sup> Upon review, we will dismiss the motions.

**I. LAW**

A motion to reconsider is based on an incorrect application of law or policy to the prior decision, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

A noncitizen convicted of (or who admits having committed, or who admits committing acts which constitute the essential elements of) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime is inadmissible. Section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i). Individuals found inadmissible under section 212(a)(2)(A) of the Act for a crime involving moral turpitude may seek a discretionary waiver of inadmissibility under

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<sup>1</sup> On motion, the Applicant has overcome the ground for which we summarily dismissed his appeal.

section 212(h) of the Act. Section 212(h)(1)(A) of the Act provides for a waiver where the activities occurred more than 15 years before the date of the application if admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and the foreign national has been rehabilitated. Section 212(h)(1)(B) of the Act provides for a waiver if denial of admission would result in extreme hardship to a United States citizen or lawful permanent resident spouse, parent, son, or daughter

If the noncitizen demonstrates the existence of the required hardship or that he or she has been rehabilitated, he or she must then show that U.S. Citizenship and Immigration Services (USCIS) should favorably exercise its discretion and grant the waiver. Section 212(h) of the Act. When exercising our discretion, we “balance the adverse factors evidencing a [foreign national’s] undesirability as a permanent resident with the social and humane considerations presented on the [foreign national’s] behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.” *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 300 (BIA 1996)(citations omitted). The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

## II. ANALYSIS

The Applicant does not contest the finding of inadmissibility for crimes involving moral turpitude, a determination supported by the record.<sup>2</sup> Instead, the issues on motion are whether the Applicant has established eligibility for a waiver of inadmissibility pursuant to section 212(h)(1)(A) or 212(h)(1)(B) of the Act and whether she merits a favorable exercise of discretion.

On motion, the Applicant asserts that she has been rehabilitated. Although not addressed by the Director, we have considered the evidence of rehabilitation in the record and find that the Applicant has demonstrated that she has been rehabilitated; however, the evidence does not demonstrate that she merits a waiver as a matter of discretion.

### A. Waiver Under Section 212(h)(1)(A) of the Act

The last act acts rendering the Applicant inadmissible under section 212(a)(2)(A) of the Act occurred in 2005, more than 16 years ago. Consequently, the Applicant may demonstrate eligibility for a waiver of inadmissibility pursuant to either section 212(h)(1)(A) or section 212(h)(1)(B) of the Act. To meet the requirements of section 212(h)(1)(A) of the Act, the Applicant must show that 1) admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and 2) the Applicant has been rehabilitated.

The record reflects that the Applicant has not had any arrests since 2005. The record also demonstrates that she has a history of payment of taxes, is the primary care provider for her and her spouse’s three minor children, and is actively involved in the education of her children. Given these factors as well as the passage of more than 16 years with no criminal record, we find that the Applicant has been

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<sup>2</sup> The Applicant’s criminal history includes the following: (1) a 2003 conviction for shoplifting in violation of section 2C:20-11 of the New Jersey Statutes Annotated (N.J. Stat. Ann.); (2) a 2004 conviction for receiving stolen property in violation of section 2C:20-7 of the N.J. Stat. Ann.; (3) a 2005 conviction for shoplifting in violation of section 2C:20-11 of the N.J. Stat. Ann; and (4) a 2006 conviction for shoplifting in violation of section 2C:20-11 of the N.J. Stat. Ann.

rehabilitated and that her admission would not be contrary to the national welfare, safety, or security of the United States.

## B. Discretion

We now consider whether the Applicant merits a waiver of inadmissibility as a matter of discretion. The burden is on the foreign national to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez*, 21 I&N Dec. at 299. We must balance the adverse factors evidencing an applicant's undesirability as an LPR with the social and humane considerations presented to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. *Id.* at 300 (citations omitted). The adverse factors include the nature and underlying circumstances of the inadmissibility ground(s) at issue, the presence of additional significant violations of immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of bad character or undesirability. *Id.* at 301. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where residency began at a young age), evidence of hardship to the foreign national and his or her family, service in the U.S. Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to good character. *Id.*

Here, the record reflects that the Applicant has an immigration history that presents significant adverse factors. Specifically, the record reflects the following: In [REDACTED] 2003, she entered the United States with a transit visa,<sup>3</sup> and instead of completing her travel to Jamaica, she applied for asylum. She was subsequently detained and then paroled into the United States. In [REDACTED] 2007, she married her former spouse. In [REDACTED] 2007, she appeared before an Immigration Judge, withdrew her asylum application, and indicated that her spouse would be filing a Form I-130, Petition for Alien Relative (Form I-130), on her behalf. She further indicated that she would accept a grant of voluntary departure if her Form I-130 and related applications were not approved. On [REDACTED] 2008, she appeared before the Immigration Judge and claimed the Form I-130 had not been filed because her spouse was in a coma due to a car accident. The Immigration Judge set a follow-up court date for [REDACTED] 2008, and ordered the Applicant to submit documentation at that time sufficient to prove that her former spouse was incapacitated and could not physically file the Form I-130. On [REDACTED] 2008, she failed to appear at the Immigration Court, and she was ordered removed in absentia. In [REDACTED] 2011, she was apprehended by immigration authorities and subsequently released under an order of supervision. The record also reflects that while married to her former spouse, the Applicant gave birth to her and her current spouse's three children, born in 2008, 2012, and 2013. In 2014,

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<sup>3</sup> Transit visas are nonimmigrant visas for persons traveling in immediate and continuous transit through the United States en route to another country. Attempting to obtain a visa by the willful misrepresentation of a material fact, or fraud, may result in the permanent refusal of a visa or denial of entry into the United States. Since the identified basis for dismissal is dispositive of the Applicant's appeal, we decline to reach and hereby reserve the issue of whether the Applicant is also inadmissible for fraud of misrepresentation under section 212(a)(6)(C)(i) of the Act. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also *Matter of L-A-C-* 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

she divorced her former spouse. During this same time, the Applicant's current spouse was also married and obtained LPR status through a Form I-130 filed on his behalf in 2007 by his former spouse. The Applicant's current spouse divorced his first spouse in 2014. In 2017, the Applicant and her current spouse were married, and in 2018, he filed a Form I-130 on her behalf.

In the present case, the adverse factors are the Applicant's lack of a valid entry document upon her arrival in the United States; her misrepresentation of her immigration intent when procuring a transit visa; her failure to attend her removal hearing; her noncompliance with the removal order; her lengthy unlawful residence and unauthorized employment; misrepresenting the bona fides of her marriage to her former spouse when appearing before the Immigration Judge in [ ] 2007 and [ ] 2008;<sup>4</sup> her criminal convictions involving moral turpitude; and the lack of evidence in the record indicating that she has been active in, or contributed to her community, aside from her involvement in her children's educational and extracurricular activities.

The favorable factors in the case are the Applicant's family ties, including her U.S. citizen spouse, three U.S. citizen children, and LPR father; hardship to her and her family members if the waiver application is denied; her apparent lack of criminal activity since 2005; support to her family; a statement expressing remorse for her criminal offenses; and letters of support indicating that the Applicant is a good mother, a caregiver to her father, a recent widow, and a kind person.

We have considered the extent to which the Applicant and her family's hardship mitigates the adverse factors in this case. However, the Applicant's immigration and criminal history reflect an ongoing disregard for U.S. laws and are significant adverse factors. While we acknowledge the aforementioned favorable factors, they are insufficient to outweigh the adverse factors, such that a favorable exercise of discretion is not warranted. Accordingly, the waiver application remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

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<sup>4</sup> The record reflects in [ ] 2008, the Applicant gave birth to her and her current spouse's first child, which was five months after appearing before the Immigration Judge requesting additional time for her former spouse to file the Form I-130 on her behalf.