U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10182986

Date: JUL. 26, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied for an immigrant visa and seeks a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h).

The Director of the Nebraska Service Center denied the application. The Director noted the Applicant's inadmissibility under section 212(a)(2)(A) of the Act for having been convicted of a crime involving moral turpitude. The Director then determined that as the Applicant had been convicted of an aggravated felony after admission as a lawful permanent resident, he was statutorily ineligible for a waiver of inadmissibility. Moreover, the Director noted that even if the Applicant were eligible for a waiver of inadmissibility, the application would be denied as a matter of discretion as the Applicant's conviction was for a violent or dangerous crime.

On appeal, the Applicant contends that his conviction is not a crime of violence and thus, not an aggravated felony, rendering him eligible for a waiver of inadmissibility for his crimes involving moral turpitude. Moreover, the Applicant asserts that he has demonstrated that he merits a favorable exercise of discretion.

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). This office reviews the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

Any 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) of the Act, 8 U.S.C. § 1182(a)(2)(A). 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 section 212(h) of the Act, 8 U.S.C. § 1182(h).

No waiver shall be granted to a noncitizen who has previously been admitted to the United States as lawfully admitted for permanent residence if either since the date of such admission the noncitizen has been convicted of an aggravated felony or the noncitizen has not lawfully resided continuously in the United States for a period of at least seven years immediately preceding the date of initiation of proceedings to remove the noncitizen from the United States. Section 212(h)(2) of the Act.

II. ANALYSIS

The issue on appeal is whether the Applicant is eligible for a waiver of inadmissibility under section 212(h) of the Act. We find that the Applicant is not statutorily eligible for a waiver of inadmissibility under section 212(h) of the Act.

The record establishes that the Applicant was admitted to the United States as a lawful permanent resident in May 1994. In [redacted] 1997, he was convicted in the County Court of the State of New York, [redacted] of manslaughter in the second degree, vehicular assault in the second degree, and driving under the influence, and sentenced to a term of four to twelve years of imprisonment. On [redacted] 1997, a Notice to Appear was issued, which initiated proceedings to remove the Applicant from the United States. The Applicant was ordered removed in [redacted] 1998.

On appeal, the Applicant contended that his conviction is not a crime of violence and thus, not an aggravated felony, rendering him eligible for a waiver of inadmissibility for his crimes involving moral turpitude. Moreover, he asserted that he had clearly demonstrated that he merited a favorable exercise of discretion.

On May 24, 2022, we issued a Notice of Intent to Dismiss (NOID). We stated that we intended to dismiss the appeal because the Applicant was statutorily ineligible for a waiver under section 212(h) of the Act because he was admitted to the United States as a lawful permanent resident and he had not lawfully resided continuously in the United States for at least seven years immediately preceding the initiation of removal proceedings.[1] We gave the Applicant an opportunity to submit additional evidence to rebut our findings. 8 C.F.R. § 103.2(b)(8)(iii).

The Applicant submitted a response to the NOID, outlining our findings and stating that "that is not a cancellation of removal for Legal Permanent Residents" and that the "7 year continuous residence was not an issue and is not applicable to this case." He also stated that "there is no requirement that someone who has been removed and stayed out of the United States for more than 15 years needs to show that residence for 7 years prior to the issuance of the NTA." We do not agree.

As we explained in detail in the NOID, the Applicant is not statutorily eligible for a waiver under section 212(h) of the Act because he was admitted to the United States as a lawful permanent resident and the Applicant had not lawfully resided continuously in the United States for at least seven years

[1] We did not address the Applicant's arguments on appeal and reserved them. We detailed that our reservation of the issues raised on appeal was not a stipulation that the Applicant has established eligibility for a waiver of inadmissibility. Rather, we noted that the Applicant was statutorily ineligible for relief on a separate ground, and thus, there was no constructive purpose in considering the arguments made on appeal, because it would not change our determination.

immediately preceding the initiation of removal proceedings. The Applicant is thus permanently barred from obtaining a waiver pursuant to section 212(h)(2) of the Act.

ORDER: The appeal is dismissed.