U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22030092

Date: MAY 10, 2022

Appeal of Long Island, New York Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust his status to that of a lawful permanent resident 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 a crime involving moral turpitude.

The Director of the Long Island, New York Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the Applicant did not demonstrate that he meets the statutory eligibility requirements under section 212(h) of the Act and that his application merits a favorable exercise of discretion. On appeal, the Applicant asserts that he established both his rehabilitation and sufficient positive equities to warrant a discretionary approval of the waiver application.

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).

Noncitizens 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). Where the activities resulting in inadmissibility occurred more than 15 years before the date of the application, a waiver is available if admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and the noncitizen has been rehabilitated. Section 212(h)(1)(A) of the Act. A waiver is also available if denial of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act. If a noncitizen demonstrates their eligibility under section 212(h)(1)(A) or (B) of the Act, USCIS must then decide whether to exercise its discretion favorably and consent to the noncitizen's admission to the United States. Section 212(h)(2) of the Act.

With respect to the discretionary nature of a waiver, the burden is on the Applicant to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez,* 21 I&N 296, 299 (BIA 1996). We must balance the adverse factors evidencing the Applicant's undesirability as a lawful permanent resident 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.*

In these proceedings, it is an applicant's burden 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, 375-76 (AAO 2010).

II. ANALYSIS

The issues on appeal are whether the Applicant has established eligibility for a waiver of inadmissibility pursuant to section 212(h)(1)(A) of the Act and if so, whether a favorable exercise of discretion is warranted.[1]

The record reflects that the Applicant, a native and citizen of Colombia, was arrested and charged with the offense of [redacted] felony under New York Penal Code section 155.30, in [redacted] 1996. He entered a plea of guilty to this offense in [redacted] 1997 and was subsequently sentenced to conditional discharge for a period of three years. The Applicant does not contest his inadmissibility for having been convicted of a crime involving moral turpitude. However, he asserts that the Director erred in finding him statutorily ineligible for a waiver under section 212(h)(1)(A) of the Act.

The Applicant filed the waiver application with supporting evidence that included: evidence of his adult son's U.S. citizenship and his adult daughter's lawful permanent residence; birth certificates for his five minor U.S. citizen grandchildren; two family photographs; his individual federal tax returns for the years 2017 through 2019; articles of incorporation and other company documentation for a Florida corporation that he established in [redacted] 2017 (described by counsel as a [redacted] business); and country conditions information for Colombia.

In evaluating the Applicant's eligibility under section 212(h)(1)(A) of the Act, the Director acknowledged that the record reflects that he had not been arrested since 1996 but determined that

[1] In a memorandum submitted in support of his waiver application, the Applicant stated that he "requires a waiver under INA § 212(h)(1)(A), the provision relating to offenses over 15 years old (no extreme hardship)." Therefore, we will not consider, in the alternative, the Applicant's eligibility for a waiver under section 212(h)(1)(B) of the Act.

"the mere absence of additional criminal behavior does not by itself sufficiently demonstrate 'rehabilitation.'" The Director emphasized that the Applicant had not submitted any additional evidence to establish what he had done since his conviction in furtherance of rehabilitation, noting that the fact that the Applicant entered the United States unlawfully in 2011, approximately eight years before filing for adjustment of status, weighed heavily against his claim of rehabilitation.

On appeal, the Applicant states that "30 years have transpired since the criminal act and the unlawful entry occurred approximately ten years ago," and maintains that the Director erred in determining that he did not demonstrate rehabilitation. He does not submit any additional evidence in support of the waiver application.

As noted, section 212(h)(1)(A) of the Act has three separate components and requires that an applicant establish: (1) that at least 15 years have passed since the criminal activities that resulted in admissibility; (2) that their admission would not be contrary to the national welfare, safety, or security; and (3) that they have been rehabilitated. Considering these separately delineated provisions, we agree with the Director that the mere passage of time following an applicant's criminal activity is not sufficient to establish rehabilitation. Here, the Applicant established that the crime for which he is inadmissible occurred more than 20 years prior to the filing of his adjustment of status application, and that it was a non-violent crime. However, he has not submitted sufficient evidence to demonstrate how he has been rehabilitated, particularly given that he committed a serious violation of U.S. immigration laws by entering the United States without being inspected and admitted as recently as 2011. Accordingly, the Applicant has not established his statutory eligibility for a waiver under section 212(h) of the Act.

The Director further emphasized that even if the Applicant had established his rehabilitation, doing so does not automatically result in a discretionary approval of his waiver application under section 212(h)(2) of the Act. The Director determined that the evidence submitted did not establish that the favorable factors in the Applicant's case outweighed the unfavorable factors such that he warrants a favorable exercise of discretion. On appeal, the Applicant asserts that the Director did not give sufficient weight to the favorable factors in his case but does not otherwise address the Director's discretionary determination.

After reviewing the record in its entirety, we agree with the Director that the positive factors presented in the Applicant's case are outweighed by negative factors. The Applicant's positive factors include his strong family ties in the United States, where his spouse (an asylum applicant), two adult children and five grandchildren reside. The Applicant also documented his ownership of a small business since 2017 and provided evidence that he paid taxes in the three years preceding the filing of his waiver application. The record contains evidence that the Applicant was granted Significant Public Benefit advance parole. The Director acknowledged the Applicant's claim that he has granted the parole to assist the Drug Enforcement Agency (DEA), but emphasized that the nature and extent of that assistance is not explained or documented in the record. In addition, the record contains evidence of poor country conditions in Colombia, including political unrest, ongoing violence, and poverty. The Director noted, however, that the Applicant indicated on his adjustment of status application that he has owned a business in Colombia since 1988, and that he appears to have resided and supported himself in Colombia for a long period prior to his most recent unlawful entry to the United States in

2011. Finally, the Director acknowledged that the Applicant expressed remorse at the time of his adjustment of status interview.

The unfavorable factors in the Applicant's case include his conviction for a crime involving moral turpitude, his repeated entries without inspection in January 1986, December 1996 and November 2011 and several periods of stay in violation of U.S. immigration laws, his apprehension by immigration officials and removal at government expense in 1986, and his use of a false identity in his dealings with [redacted] New York law enforcement and court officials in connection with his arrest, conviction and sentencing for grand larceny.

While we acknowledge the favorable factors presented, we do not find that they outweigh the significant negative factors in the record. In addition to his conviction for a crime involving moral turpitude, the Applicant has a history of significant immigration violations which reflect a disregard for U.S. law. In addition, the Applicant has not submitted sufficient evidence of the existence of other favorable factors. For instance, he did not provide evidence that he is involved in any community activities that would reflect positively on his character, nor did he submit evidence of support for his waiver from friends, employers or community members or other evidence of value or service in the community. While the Applicant submitted evidence of his family ties in the form of civil documents, he did not submit statements from his family members, or his own personal statement, addressing his family responsibilities or the potential hardship he or his family would experience if he is not granted the waiver. As a result, we conclude that the Applicant has not shown the positive factors in his case outweigh the established negative factors, and consequently, he has not established he merits a favorable exercise of discretion.

III. CONCLUSION

For the reasons discussed, the Applicant has not established his statutory eligibility for the requested waiver under section 212(h) of the Act or that his application warrants a favorable exercise of discretion. Accordingly, the waiver application will remain denied.

ORDER: The appeal is dismissed.