U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21943238

Date: AUG. 16, 2022

Appeal of Washington, DC Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Peru, 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 a crime involving moral turpitude. The Director of the Washington, DC Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the Applicant did not establish that his U.S. citizen spouse, a qualifying relative, would experience extreme hardship if he was denied admission and that he did not merit a favorable exercise of discretion. The matter is now before us on appeal. On appeal, the Applicant submits evidence and a brief asserting his eligibility. The Administrative Appeals Office reviews the questions in this matter *de novo*. *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

A foreign national 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. There is a "petty offense" exception of this inadmissibility for foreign nationals who have been convicted only one CIMT if: (1) the maximum penalty possible for the crime of which the foreign national was convicted did not exceed imprisonment for one year and (2) the foreign national was not sentenced to a term of imprisonment in excess of six months. Section 212(a)(2)(A)(ii)(II) of the Act.

Foreign nationals who are inadmissible under section 212(a)(2)(A)(i) may seek a discretionary waiver of inadmissibility under section 212(h) of the Act. A discretionary waiver is 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.

A determination of whether denial of admission will result in extreme hardship depends on the facts and circumstances of each case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citations omitted). We recognize that some degree of hardship to qualifying relatives is present in most cases; however, to be considered "extreme," the hardship must exceed that which is usual or

expected. *See Matter of Pilch*, 21 I&N Dec. 627, 630-31 (BIA 1996) (finding that factors such as economic detriment, severing family and community ties, loss of current employment, and cultural readjustment were the "common result of deportation" and did not alone constitute extreme hardship). In determining whether extreme hardship exists, individual hardship factors that may not rise to the level of extreme must also be considered in the aggregate. *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted). In addition to demonstrating the required extreme hardship under section 212(h) of the Act, the foreign national must also show that U.S. Citizenship and Immigration Services should favorably exercise its discretion and grant the waiver.

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 issues on appeal are whether the Applicant is inadmissible under section 212(a)(2)(A)(i) of the Act, whether he has established extreme hardship, and whether he merits a waiver as a matter of discretion. We note that while the Applicant has primarily addressed hardship to his U.S. citizen spouse, he has a U.S. citizen daughter with his spouse and two U.S. citizen stepsons (his spouse's children from prior relationships) who are also qualifying relatives and whose hardship should therefore be considered in the aggregate with his spouse's hardship. The record reflects that the Applicant is inadmissible under section 212(a)(2)(A)(i) of the Act and he has not established extreme hardship to his qualifying relatives. As the Applicant has not established extreme hardship, we will not determine whether he merits a waiver as a matter of discretion. Our decision is based on a review of the record, which includes, but is not limited to, statements from the Applicant and his spouse, a psychological evaluation for the Applicant's spouse, medical records, photographs, financial records, and information on conditions in Peru.

A. Inadmissibility Under Section 212(a)(2)(A)(i) of the Act

The record reflects that the Applicant was convicted in [redacted] 2003 of concealing or taking possession of merchandise under section 18.2-103 of the Annotated Code of Virginia (Va. Code Ann.), and he was convicted in [redacted] 2012 of giving false identity to a law-enforcement officer under section 19.2-82.1 of the Va. Code Ann. The Director determined that these were crimes involving moral turpitude rendering the Applicant inadmissible under section 212(a)(2)(A)(i) of the Act.[1]

On appeal, the Applicant asserts that giving false identity to a law-enforcement officer under section 19.2-82.1 of the Va. Code Ann. is not a crime involving moral turpitude, and therefore he would not be inadmissible under section 212(a)(2)(A)(i) of the Act as his conviction for concealing or taking possession of merchandise would fall under the petty offense exception.[2] The relevant statute provides that, "[a]ny person who falsely identifies himself to a law-enforcement officer with the intent to deceive the law-enforcement officer as to his real identity after having been lawfully detained and after being requested to identify himself by a law-enforcement officer, is guilty of a Class 1

[1] The Applicant describes the underlying details of his convictions, but this would not affect the finding of inadmissibility.
[2] The Applicant was sentenced to 180 days in jail, which was suspended, and the maximum possible sentence for the crime is 12 months.

misdemeanor." While the Applicant cites to unpublished Board of Immigration Appeals (the Board) cases which found similar statutes to involve moral turpitude as they required an intent to evade or deceive, he claims that section 19.2-82.1 of the Va. Code Ann. has an ambiguous mens rea requirement. The Applicant states that the statute does not require a showing that the goal of the deception is to procure something of value to the detriment of another, and the element of knowing misrepresentation itself does not by itself make fraud a necessary element of a crime. The Applicant also states that convictions for false statements do not involve moral turpitude where fraud is not an essential element and the statement is not material.

The Director correctly determined that the Virginia offense of giving false identity to a law enforcement officer is a crime involving moral turpitude. The Board has held that "[i]n determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere." *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992). In this case, section 19.2-82.1 of the Va. Code Ann. includes the requisite mens rea, which is the intent to deceive. Furthermore, the Board has held that a false statement that an individual knows is untrue, made with the intent to mislead a public official and to interfere with that official's duties, involves moral turpitude. *Matter of Jurado*, 24 I&N Dec. 29, 33 (BIA 2006). As section 19.2-82.1 of the Va. Code Ann. requires the intent to deceive a law-enforcement officer and interferes with their official duties, it is a crime involving moral turpitude.

B. Extreme Hardship

An applicant may show extreme hardship in two scenarios: 1) if the qualifying relative remains in the United States separated from the applicant and 2) if the qualifying relative relocates overseas with the applicant. Demonstrating extreme hardship under both of these scenarios is not required if the applicant's evidence demonstrates that one of these scenarios would result from the denial of the waiver. The applicant may meet this burden by submitting a statement from the qualifying relative certifying under penalty of perjury that the qualifying relative would relocate with the applicant, or would remain in the United States, if the applicant is denied admission. 9 *USCIS Policy Manual* B 4(B), https://www.uscis.gov/policymanual.[3] In the present case, the record does not include such a statement. The Applicant must therefore establish extreme hardship upon both separation and relocation.

The Applicant asserts that his spouse would experience emotional, psychological, childcare, financial, and medical hardship if she remained in the United States separated from him. First, we note the Director's reference to the Applicant's spouse's statement in her interview before an immigration officer that she did not live with the Applicant from August 2015 until January 2020. The Applicant's spouse now explains the history of her relationship with the Applicant in response to her prior interview statements. She states that although she and the Applicant were separated during their

[3] With his waiver application, the Applicant's lawful permanent resident parents detailed hardship they would experience if the Applicant was not admitted to the United States, including help he provides in their day-to-day activities. The Director did not address their hardship and the Applicant does not address their hardship on appeal. However, we note that based on the statements of the Applicant's parents, the record does not establish that they would experience extreme hardship.

marriage, they saw each other every day, and lived together again when they were ready. The Applicant's spouse states that she had two difficult marriages before meeting the Applicant, and he gives her happiness, support, and stability. The psychological evaluation provides that the Applicant's spouse has a history of severe depressive episodes following major stressors, and she is at risk of another major depressive episode and severe anxiety if separated from the Applicant.

The Applicant states he and his spouse are the primary caregivers for their daughter and his stepson, and he assists financially with another stepson who is in college. The Applicant's spouse details the role the Applicant plays in helping with their daughter, including taking her to daycare, helping when she is sick, and helping with day-to-day activities; and states he is a father-figure for her sons. She further mentions that the Applicant cared for her and her children when they had Covid-19. The Applicant has submitted a copy of his spouse's positive Covid-19 test from November 2020. The Applicant's spouse also mentions that the Applicant is the sole financial provider for her and her children, as she lost her job and medical insurance due to having Covid-19. The Applicant states that he runs his own carpet restoration business and earns about $25,000 a year. The record includes the Applicant and his spouse's joint bank statements which show a low balance, and separately filed tax returns for a few years.

Lastly, the Applicant states that his spouse suffers from gastritis, pancreatic cysts, and gallstones, with her gallstones causing hospitalization in 2019 due to severe abdominal pain, and her medical conditions require regular checkups which are expensive, especially since she lost her employer-sponsored health insurance. The Applicant's spouse states that the Applicant provides her emotional support and reminds her about her medical appointments. Her medical records show that in July 2019 she had her gallbladder removed.

The Applicant has not established, by a preponderance of the evidence, extreme hardship upon separation from his qualifying relatives. The record includes minimal documentation of the Applicant's relationship, role, and level of involvement with his child and stepchildren, and the hardship they would experience without him. The Applicant and his spouse, and by extension her children, have lived separately for a significant portion of their marriage which diminishes the overall weight of his spouse's emotional, psychological, medical, and childcare hardship claims. For instance, although the Applicant's spouse had surgery in 2019, there is no indication that the Applicant assisted in her recovery.

In regard to financial hardship, the record does not include documentary evidence that the Applicant's spouse experienced financial difficulty while previously separated from the Applicant. In addition, while the Applicant submitted a copy of a positive Covid-19 test for his spouse, he has not documented the length or severity of her infection, that she lost her job as a result, or that she is unable to find employment. Considering all the evidence in its totality, the record is insufficient to show that the hardship faced by the Applicant's qualifying relatives would rise beyond the common results of removal or inadmissibility if they remained in the United States. We find that the Applicant has not established extreme hardship if his waiver application is denied.

As the Applicant has not established, by a preponderance of the evidence, extreme hardship to his qualifying relatives in the event of separation, we will not address hardship in the event of relocation

to Peru. As the Applicant has not met the extreme hardship requirement of section 212(h) of the Act, no purpose would be served in determining whether he merits a waiver as a matter of discretion.

ORDER: The appeal is dismissed.