U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17401850

Date: DEC. 12, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied for an immigrant visa and was found inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), based on a conviction for a crime involving moral turpitude (CIMT). He seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h).

The Director of the Nebraska Service Center noted the Applicant's inadmissibility for a crime involving moral turpitude. Although the Director determined that the Applicant had established extreme hardship to a qualifying relative for purposes of a waiver of inadmissibility, the Director concluded that the Applicant did not merit a favorable exercise of discretion. The application was denied accordingly.

On appeal, the Applicant maintains that he is not inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act because his conviction was not for a crime involving moral turpitude. In the alternative, the Applicant maintains that if it is determined that his conviction is for a crime involving moral turpitude, said conviction falls under the petty offense exception at section 212(a)(2)(A)(ii) of the Act, as the maximum penalty possible did not exceed imprisonment for one year, and he was not sentenced to any term of imprisonment.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review 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 conclude that the Applicant's conviction does not constitute a crime involving moral turpitude under section 212(a)(2)(A)(i)(I) of the Act. As such, the Applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act and thus does not require a waiver.[1] Accordingly, the matter before us is dismissed as moot.[2]

[1] However, we note that our inadmissibility determination does not provide the Applicant with any immigration status. Because the Applicant is abroad, the final determination concerning his eligibility for a visa, including whether he is subject to inadmissibility under any provisions of the Act, will be made by the U.S. Department of State (DOS).

[2] The only matter before us is whether the Applicant merits a waiver under section 212(h) of the Act.

Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), provides that any 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. Pursuant to section 212(a)(2)(A)(ii) of the Act, there is an exception to inadmissibility under section 212(a)(2)(A)(i)(I) for a noncitizen who committed only one crime of moral turpitude if the maximum penalty possible for the crime did not exceed imprisonment for one year and the noncitizen was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The issue on appeal is whether the Applicant is inadmissible under section 212(a)(2)(A) of the Act for having been convicted of a crime involving moral turpitude. We find that the Applicant's conviction is not a crime involving moral turpitude which would render him inadmissible under section 212(a)(2)(A)(i)(I) of the Act

The record establishes that in [redacted] 1996, the Applicant was convicted of battery in violation of Florida Statutes § 784.03, which stated at the time that battery is committed when a person "[a]ctually and intentionally touches or strikes another person against the will of the other; or [i]ntentionally causes bodily harm to an individual."

In *Matter of Fualaau*, 21 I&N Dec. 475, 477 (BIA 1996), the Board determined that simple assault or battery is generally not considered to be a crime involving moral turpitude, even if the intentional infliction of physical injury is an element of the crime. *See also Matter of Sanudo*, 23 I&N Dec. 968, 971 (BIA 2006) (recognizing that not all crimes involving the injurious touching of another person reflect moral depravity on the part of the offender). However, the Board determined that assault and battery offenses involve moral turpitude where there is an aggravating factor such as the use of deadly weapon, the intentional infliction of serious bodily injury, and bodily harm upon individuals deserving of special protection such as a child, domestic partner, or a peace officer. *See Matter of Sanudo*, 23 I&N Dec. 968 (BIA 2006); *Matter of Medina*, 15 I&N Dec. 611 (BIA 1976); *Matter of Danesh, supra; see also Sosa-Martinez v. US. Atty. Gen.*, 420 F.3d 1338, 1342 (11th Cir. 2005) (holding that aggravated battery which includes the use of a deadly weapon or when the battery results in serious bodily injury is a crime involving moral turpitude). The Applicant was convicted of simple battery under Florida Statutes § 784.03, which does not involve aggravating factors such as the use of deadly weapon, the infliction of serious bodily injury, or bodily harm against a protected individual. Therefore, the Applicant's conviction is not a crime involving moral turpitude which would render him inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Alternatively, even if the Applicant's battery conviction qualified as a crime involving moral turpitude, he would not be inadmissible under section 212(a)(2)(A) of the Act because this conviction falls under the petty offense exception at section 212(a)(2)(A)(ii) of the Act, as the maximum penalty possible did not exceed imprisonment for one year, and he was not sentenced to any term of imprisonment. [3]

[3] The Applicant was sentenced to 12 months' probation, and the maximum penalty for a first-degree misdemeanor in Florida is a "definite term of imprisonment not exceeding 1 year."

The Applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act and the waiver application is not necessary on this issue. Accordingly, we will dismiss the appeal as further pursuit of the matter at hand is moot.

ORDER: The appeal is dismissed.