U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15896229

Date: FEB. 7, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant applied abroad for an immigrant visa and was found inadmissible to the United States for conviction of a "crime involving moral turpitude" (CIMT). He seeks to waive the inadmissibility ground under Immigration and Nationality Act (the Act) section 212(h), 8 U.S.C. § 1182(h).

The Director of the Nebraska Service Center denied the waiver application. Besides finding the Applicant's conviction to be a CIMT, the Director also concluded that the crime constitutes an "aggravated felony" that disqualifies the Applicant for the requested waiver. *See* section 212(h)(2) of the Act.

On appeal, the Applicant asserts that, although his conviction is a CIMT and an aggravated felony, it does not "complete[ly] bar" approval of his waiver application.

The Applicant bears the burden of establishing eligibility for the requested waiver by a preponderance of evidence. *See* section 291 of the Act, 8 U.S.C. § 1361 (discussing the burden of proof); *see also Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010) (discussing the standard of proof). Upon *de novo* review, we will dismiss the appeal.

I. INADMISSIBILITY

Noncitizens are generally inadmissible to the United States if they are convicted of, or admit committing the essential elements of, a CIMT. Section 212(a)(2)(A)(i)(I) of the Act. A crime involves moral turpitude if its elements require reprehensible conduct and a culpable mental state. *Matter of Salad*, 27 I&N Dec. 733, 735 (BIA 2020) (citations omitted). Conduct is "reprehensible" if it is "inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general." *Id.*

The Applicant, a 57-year-old native and citizen of Nigeria, was admitted to the United States in 1999 as a diversity immigrant. *See* section 203(c) of the Act, 8 U.S.C. § 1153(c). The record demonstrates, and the Applicant concedes, that he was convicted of a CIMT in 2005 while working for the U.S. Postal Service. The Applicant pleaded guilty to mail theft under section 1709 of title 18 of the U.S. Code after investigators caught him stealing letters containing credit cards. He told investigators that

he intended to send the cards to a contact in the Netherlands in exchange for money. A federal district court judge sentenced him to 21 months in prison.

After the Applicant's criminal conviction, he was removed from the United States. In the removal proceedings, the Board of Immigration Appeals (BIA) affirmed an Immigration Judge's finding of the Applicant's conviction for a CIMT. *See* section 237(a)(2)(A)(i)(I) of the Act; 8 U.S.C. § 1227(a)(2)(A)(i)(I) (rendering noncitizens deportable for certain CIMT convictions). Thus, the record demonstrates the Applicant's inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

II. THE REQUESTED WAIVER

Most noncitizens with CIMT convictions may apply to waive the inadmissibility ground in one of two ways. First, they may demonstrate that: their criminal activities occurred more than 15 years before their applications for admission; their admissions would not harm the welfare, safety, or security of the United States; and they have been rehabilitated. Section 212(h)(1)(A) of the Act. Alternatively, waiver applicants may establish that denials of their admissions would cause "extreme hardship" to their U.S. citizen or lawful permanent resident spouses, parents, sons, or daughters. Section 212(h)(1)(B) of the Act. In either case, applicants must also demonstrate that they warrant favorable exercises of discretion. Section 212(h)(2) of the Act.[1]

Additionally, the Act bars approvals of 212(h) waivers under certain circumstances. The provision at issue states:

> No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if . . . since the date of such admission the alien has been convicted of an aggravated felony.

Section 212(h)(2) of the Act. The term "aggravated felony" refers to a variety of crimes, including "a theft offense . . . for which the term of imprisonment [was] at least one year," and "an offense that involves fraud or deceit in which the loss to the victim or victims exceeds $10,000." Sections 101(a)(43)(G), (M) of the Act, 8 U.S.C. § 1101(a)(43)(G), (M).

As previously indicated, the Applicant was admitted to the United States as a lawful permanent resident in 1999. Also, the BIA held that his 2005 conviction, besides involving moral turpitude, constituted an aggravated felony under sections 101(a)(43)(G) and (M) of the Act. Thus, the Director correctly found that section 212(h)(2) of the Act bars U.S. Citizenship and Immigration Services (USCIS) from granting the Applicant's requested waiver.

On Form I-290B, Notice of Appeal, the Applicant asserts that, despite his aggravated felony conviction, USCIS policy allows approval of his requested waiver. The plain language of section 212(h)(2) of the Act, however, bars a waiver grant for an applicant convicted of an aggravated felony after their U.S. admission as a lawful permanent resident. The Applicant does not specify any USCIS

[1] Self-petitioners under the Violence Against Women Act (VAWA) may also waive criminal grounds of inadmissibility. Such waiver applicants need only demonstrate that they warrant favorable grants of discretion. Section 212(h)(1)(C) of the Act.

policy or other legal authority interpreting the provision differently, nor are we aware of any. Thus, the Act requires denial of his waiver application.[2]

III. CONCLUSION

After his admission to the United States as a lawful permanent resident, the Applicant was convicted of an aggravated felony. The Act therefore required denial of his waiver application.

ORDER: The appeal is dismissed.

[2] Additionally, the Applicant's removal from the United States and conviction of an aggravated felony appear to render him inadmissible to the country "at any time." Section 212(a)(9)(A)(ii)(I) of the Act. *See Matter of L-S-*, 22 I&N Dec. 645, 652 (BIA 1999) (describing noncitizens previously removed and convicted of aggravated felonies as "permanently inadmissible" to the United States).