U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16588764

Date: FEB. 14, 2022

Appeal of Atlanta, Georgia Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident (LPR) 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 his conviction involving a crime involving moral turpitude (CIMT). The Director of the Atlanta, Georgia Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish that the Applicant's qualifying relative, his U.S. citizen spouse, would experience extreme hardship if he were denied the waiver.

On appeal, the Applicant submits additional evidence and a brief asserting that his spouse would experience extreme hardship if his waiver were denied. 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 withdraw the decision of the Director. The matter will be remanded for the entry of a new decision consistent with the foregoing analysis.

I. LAW

A 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)(i)(I) of the Act.

Individuals found inadmissible under section 212(a)(2)(A)(i)(I) of the Act may seek a discretionary waiver of inadmissibility under section 212(h) of the Act. Where the activities resulting in inadmissibility occurred more than 15 years before the date of the application, a discretionary 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 discretionary waiver is also available if denial of admission would result in extreme hardship to a U.S citizen or LPR spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act. Finally, if a noncitizen demonstrates 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.

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 these proceedings, it is the applicant's burden to establish by a preponderance of the evidence eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The record establishes that in 2006 the Applicant plead guilty to having committed battery in violation of Ga. Code Ann. § 16-5-23.1 based on an incident that occurred in [redacted] 2005, when the Applicant was 17 years old. The Applicant was sentenced to 12 months, consisting of three days confinement and the remaining time on probation.

The Director found the Applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. The Director based this conclusion on the Applicant's 2006 conviction for battery and also for a 2008 probation violation that the Applicant did not disclose on his waiver application.[1]

The Applicant does not contest his conviction in 2006 for a crime of moral turpitude. However, we note that section 212(a)(2)(A)(ii)(I) of the Act provides an exception to inadmissibility for a CIMT where an applicant is considered a youthful offender. Specifically, section 212(a)(2)(A)(ii)(I) of the Act states:

> (ii) Exception – Clause (i)(I) shall not apply to an alien who committed only one crime if –
>
> > (I) The crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, ...

In that the Applicant here was not yet 18 years old at the time he committed his offense, and more than five years have passed since the date on which he committed it, he may be eligible for this exception to inadmissibility under section 212(a)(2)(A)(i)(I) of the Act for this offense. Accordingly, the Director's decision is withdrawn.

[1] Although the Director noted the 2008 probation violation in her decision denying the Applicant's application to adjust status to LPR, the violation was not raised in the denial of the Applicant's waiver application.

The record, however, does not include documentation or evidence detailing the Applicant's 2008 arrest for probation violation based upon an incident that occurred in 2006. Therefore, we will remand this matter to the Director for further consideration of the Applicant's admissibility. On remand, the Director should determine whether the Applicant's 2008 arrest resulted in a conviction for a separate crime in addition to violating the terms of his probation, and if so, whether the offense is considered a crime of moral turpitude.

We note that in *Matter of Garcia-Hernandez*, 23 I&N Dec. 590, 594 (BIA 2003), the Board held that a respondent who was convicted of more than one crime, only one of which was a crime involving moral turpitude, was eligible for an exception under section 212(a)(2)(A)(ii) of the Act. Therefore, if the Director determines that the Applicant's 2008 probation violation did not result in the commission of an additional CIMT, the youthful offender exception under section 212(a)(2)(A)(ii)(I) of the Act applies and the Applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The Director determined that the Applicant's qualifying relative, his U.S. citizen spouse, would not experience extreme hardship upon separation from the Applicant. As discussed above, the Director's decision is withdrawn. On remand, if the Director determines that the exception at section 212(a)(2)(A)(ii) does not apply and the Applicant remains inadmissible, the Director must consider whether the Applicant's denial of admission would result in extreme hardship to his qualifying relatives, which include his U.S. citizen spouse and his U.S. citizen child, and whether the Applicant merits a waiver as a matter of discretion. The Director must also consider whether the Applicant is eligible for a waiver under section 212(h)(1)(A) of the Act, commonly referred to as the rehabilitation waiver, as the events leading to his second arrest occurred in 2006 or more than 15 years ago.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.