



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 21929156

Date: OCT. 11, 2022

Appeal of Washington, DC 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 having committed 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 although the Applicant established that the qualifying relative would suffer extreme hardship upon the Applicant's removal, the record did not establish that he merited a favorable exercise of discretion. We review the questions raised 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

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. Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A).

A discretionary waiver of this inadmissibility is available under section 212(h)(1)(A) of the Act if it has been more than 15 years since the date of the activities for which the applicant is inadmissible; the applicant's admission would not be contrary to the national welfare, safety, or security of the United States; and the applicant has been rehabilitated. Section 212(h)(1)(B) provides for a waiver if the denial of admission would result in extreme hardship to the applicant's U.S. citizen or LPR spouse, parent, son, or daughter.

If the foreign national demonstrates the existence of the required hardship, he or she must then show that USCIS should favorably exercise its discretion and grant the waiver. When exercising our discretion, we "balance the negative factors evidencing a [foreign national's] undesirability as a permanent resident with the social and humane considerations presented on the [foreign national's] behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 300 (BIA 1996). In these proceedings,

the Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Applicant is inadmissible for committing a crime involving moral turpitude, a decision supported by the record.¹ The Applicant previously established that the denial of the waiver application would result in extreme hardship to a qualifying relative, his U.S. citizen spouse. Therefore, the only issue before us is whether the Applicant also merits a positive exercise of discretion.

The Director found that the Applicant demonstrated many positive factors including that he entered the United States lawfully on November 27, 1991; his spouse and seven children were U.S. citizens; extreme hardship would be experienced by the Applicant's spouse and daughter S-A-M² if the waiver application was denied; the absence of any additional arrests or conviction, except for traffic violations since his 2000 conviction; he obtained a doctor of humanity degree from [redacted] and statements of support from two businesses where the Applicant worked.

Concerning the negatives, the Director found the Applicant's immigration violations were as follows: after entering the United States in 1991, he remained unlawfully from the expiration of his status in early 1992 until he filed a Form I-485 on August 29, 2008; he remained unlawfully from September 28, 2011, when his Form I-485 was denied, until he filed a second Form I-485 on March 25, 2014; he remained unlawfully from January 20, 2016, after his Form I-485 was denied, until April 14, 2018, when his appeals were exhausted,³ and until he filed his current Form I-485 on July 17, 2019. The Director determined that from March 2006 to December 2008, and January 2012 to December 2014, the Applicant worked without authorization.

The Director noted that the Applicant was arrested for the following: Grand Theft Auto on or about [redacted] 1992; Armed Burglary, Carrying a Concealed Firearm, and Aggravated Assault⁴ on or about [redacted] 1996; Burglary with Assault on or about [redacted] 1996; and Aggravated Battery on or about [redacted] 1998. On [redacted] 2000, he was convicted of Conspiracy to Commit Bank Fraud. The Director further noted that on [redacted] 1996, the Applicant registered to vote in Florida and claimed to be a U.S. citizen on his voter registration form; and on July 17, 2019, when he filed his Form I-485, the Applicant falsely stated that he had never claimed to be a U.S. citizen. Finally, from around [redacted] 2004, until at least [redacted] 2009, the Applicant owed approximately \$80,000.00 in child support and did not submit evidence to show that he was current in his obligations.

¹ On [redacted] 2000, the Applicant was convicted under 18 U.S.C. § 371, Conspiracy to Commit Bank Fraud in the United States District Court, Northern District of Georgia.

² We use initials to protect the identity of individuals.

³ We withdraw the Director's determination that the period between January 20, 2016, and April 14, 2018, constituted a period of unlawful presence because the Applicant was pursuing his right to appeal.

⁴ The Director determined that in or around 1996, the Applicant unlawfully purchased a gun from the back of someone's car, did not register it, and when he was arrested in 1996, he was in unlawful possession of the gun. This information was confirmed by the Applicant at his second adjustment of status interview.

To determine whether a grant of discretionary relief appears to be in the best interests of the United States, we balance the negative factors evidencing the Applicant's undesirability for permanent residence with the social and humane considerations presented. *Matter of Mendez-Morales*, 21 I&N Dec. at 300 (citations omitted). Negative 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. Positive factors 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.*

On appeal, the Applicant contends that the positive factors in his case outweigh the negative and that he has had a reformation of character. He states that his failure to pay child support was an indication of the poor state of his finances, and not bad moral character. On appeal, the Applicant submits pay stubs for July 2020 through April 2021 showing a child support deduction for four children. However, we note that in 2008, he owed more than \$80,000.00 in child support arrears. Although the record contains evidence that in 2013, 2014, 2020 and 2021, the Applicant made several child support payments, the record also demonstrates his long-term delinquency in making child support payments. Moreover, the Applicant has not indicated how much he currently owes in child support after years of delinquency.

On appeal, the Applicant also addressed his periods of unlawful presence and many years of working without authorization by stating that they are insufficient to establish bad moral character. However, the Applicant's repeated violations of immigration law cannot be condoned or excused, and when viewed as a whole, they amount to a significant negative factor.

The Applicant also argues that his sole conviction is over 20 years old. However, the passage of time has not diminished the seriousness of this conviction. The record includes a copy of the indictment brought against him and his co-conspirators, the first count of which describes the Applicant's active involvement in the fraud scheme. As set forth in Count 1, the Applicant and his associates obtained counterfeit checks drawn on legitimate bank accounts, which were made payable to them or other individuals whose identification they had acquired. They forged the signatures of the actual account holders and pocketed all or part of the proceeds from the individuals who cashed the checks. Count 1 also lists the specific "overt acts" committed by the Applicant and his associates, i.e., the 26 fraudulent checks, totaling approximately \$63,000.00, they passed (or attempted to pass) during the period [redacted] 1998, through [redacted] 1999. Thus, the Applicant was convicted of Conspiracy to Commit Bank Fraud. He was sentenced to 18 months in prison and ordered to make restitution in the amount of \$7,832.32 to Bank of America, \$26,411.80 to Wachovia Bank, and \$19,983.50 to Union Bank. The Applicant further argues that his many arrests did not result in convictions, occurred more than 24 years ago, and thus cannot establish bad moral character. However, in exercising its discretion, the Director may consider an Applicant's arrests even where they do not result in a conviction. See *Matter of Thomas*, 21 I&N Dec. 20, 23-24 (BIA 1995) (holding that evidence of criminal conduct that

has not culminated in a final conviction may nonetheless be considered in discretionary determinations).

Lastly, the Applicant contends on that he has never claimed to be a U.S. citizen, he never voted, and his voter registration was the result of a clerical error when he obtained his driver's license. We note the record establishes that at the time of his adjustment of status interview in 2014, the Applicant did not acknowledge that he fraudulently registered to vote in Florida in 1996. His claim at the time of his interview to having never registered to vote is, however, contradicted by the presence of a copy of the Florida voter registration form that the Applicant signed on [REDACTED] 1996. The registration form reflects that the Applicant specifically indicated that he wished to be registered as an independent voter. On appeal, the Applicant submits an April 2019 Voter Status Certification form letter from [REDACTED] Elections indicating that he "never voted" in [REDACTED] Florida. We note however, that there are other options listed on the form letter including, whether an individual was "previously a registered voter" or is "no longer registered" to vote in [REDACTED] or the State of Florida. Therefore, this letter does not refute the Director's finding that the Applicant registered to vote and therefore made a false claim to U.S. citizenship. The Applicant's argument that it would not make sense for him to jeopardize his chances of adjusting his legal immigration status by registering to vote and subsequently not voting is unavailing because an individual may choose to register to vote, but decide not to when presented with the opportunity to do so.

Ultimately, it is the Applicant's burden to establish that he warrants a favorable exercise of discretion. Here, although the Applicant has presented evidence of positive factors, the length and serious nature of the Applicant's criminal history, notably his conviction for Conspiracy to Commit Bank Fraud, and the remaining negative factors discussed above continue to outweigh the positive factors. Accordingly, the Applicant has not established by a preponderance of the evidence that he warrants a favorable exercise of discretion, and the waiver application will remain denied.

ORDER: The appeal is dismissed.