



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

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

In Re: 21819698

Date: SEP. 07, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant, a native and citizen of Germany, has applied for an immigrant visa. The Applicant has been found inadmissible 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), for having at least one conviction for a crime involving moral turpitude (CIMT), and seeks a waiver of that inadmissibility under section 212(h) of the Act.

The Director of the Nebraska Service Center denied the Form I-601, Application to Waive Inadmissibility Grounds (Form I-601), noting that in addition to the Applicant's inadmissibility for a conviction of a CIMT, the Applicant was also inadmissible as a controlled substance violator under for section 212(a)(2)(A)(i)(II) of the Act and concluded that the Applicant was not eligible for a waiver of this inadmissibility.

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). This office reviews the questions in this matter *de novo*. See *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 noncitizen convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a CIMT (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.

Noncitizens who are inadmissible under section 212(a)(2)(A)(i) 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 the noncitizen's U.S. citizen or lawful permanent resident spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act.

A noncitizen convicted of, or who admits having committed, or who admits having committed acts which constitute the essential elements of, a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible. Section 212(a)(2)(A)(i)(II) of the Act. Noncitizens found inadmissible under section 212(a)(2)(A) of the Act for a controlled substance violation related to a single offense of simple possession of 30 grams or less of marijuana may seek a discretionary waiver of inadmissibility under section 212(h) of the Act.

II. ANALYSIS

The record indicates that the Applicant is inadmissible under section 212(a)(2)(A)(i) for having been convicted of shoplifting, a CIMT, in her native Germany. The Applicant filed the instant Form I-601 in order to waive this inadmissibility. In denying the Form I-601, the Director observed that a Department of State Consular Officer found that the Applicant was additionally inadmissible under section 212(a)(2)(A)(i)(II) for a controlled substance violation, specifically that the Applicant admitted to the purchase and possession of ecstasy at the age of 19. The Director concluded that the Applicant was not eligible for a waiver of this inadmissibility under section 212(h) of the Act because her offense did not involve a single offense for simple possession of less than 30 grams of marijuana. The Director then explained that the Applicant would remain inadmissible even if a waiver was granted for her inadmissibility for CIMT under 212(a)(2)(A)(i) of the Act.

On appeal, the Applicant argues her eligibility for the waiver on appeal because she has not been convicted of violating a law or regulation related to a controlled substance. She contends that she had a juvenile adjudication for a violation of a controlled substance law according to the Juvenile District Court in [redacted] Germany, rather than a conviction, and was required to undergo counseling and community service. In support of this contention, the Applicant submits documents from the German Juvenile District Court which she claims show that she was to be treated as a juvenile rather than an adult. The Applicant further asserts that the Director erred in failing to categorize her controlled substance violation as an act of juvenile delinquency and in finding her inadmissible for that conviction.

Because the Applicant is outside the United States seeking an immigrant visa, it is the U.S. Department of State that makes the final determination concerning admissibility and eligibility for a visa, not USCIS. No purpose would be served in adjudicating the Form I-601 for her CIMT because the Applicant remains inadmissible under section 212(a)(2)(A) of the Act, a ground for which there is no waiver available. Thus, the Director did not err in denying the Form I-601 as a matter of discretion. The Form I-601 remains denied.

ORDER: The appeal is dismissed.