



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

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

In Re: 29654951

Date: JAN. 2, 2024

Appeal of St. Thomas, U.S. Virgin Islands Field Office Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant has applied to adjust status to that of a lawful permanent resident 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 a crime involving moral turpitude.

The Director of the St. Thomas, U.S. Virgin Islands Field Office denied the waiver application, finding that the Applicant had not established that she merited a favorable exercise of discretion. On appeal, the Applicant contends that she merits approval of the waiver application. 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 will remand the matter to the Director for further proceedings.

Section 212(a)(2)(A) of the Act provides that any 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. 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) of the Act. Individuals found inadmissible under section 212(a)(2)(A) of the Act for a crime involving moral turpitude may seek a discretionary waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h). Where the activities resulting in inadmissibility occurred more than 15 years before the date of the application, a 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 foreign national has been rehabilitated. Section 212(h)(1)(A) of the Act. A waiver is also available if denial of admission would result in extreme hardship to a United States citizen or lawful permanent resident spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act.

An applicant may show extreme hardship in two scenarios: 1) if the qualifying relative remains in the United States separated from the applicant and 2) if the qualifying relative relocates overseas with the applicant. See 9 USCIS Policy Manual B.4(B), <https://www.uscis.gov/policymanual> (providing guidance on the scenarios to consider in making extreme hardship determinations). Demonstrating

extreme hardship under both these scenarios is not required if the applicant's evidence demonstrates that one of these scenarios would result from the denial of the waiver. *See id.* (citing to *Matter of Calderon-Hernandez*, 25 I&N Dec. 885 (BIA 2012) and *Matter of Gonzalez Recinas*, 23 I&N Dec. 467 (BIA 2002)). The applicant may meet this burden by submitting a statement from the qualifying relative certifying under penalty of perjury that the qualifying relative would relocate with the applicant, or would remain in the United States, if the applicant is denied admission. *See id.*

The Director denied the Applicant's waiver application finding that she had not established that she merited a favorable exercise of discretion. However, the record does not indicate that the Director analyzed and determined that the Applicant had established extreme hardship to a qualifying relative. We will therefore remand the matter to the Director to consider the previously submitted documentation and the evidence on appeal to determine whether the Applicant has established extreme hardship to one or more qualifying relatives. If the Director finds that extreme hardship exists, the Director should reevaluate the record and the documentation submitted on appeal to determine if the Applicant merits a favorable exercise of discretion.

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