U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21500500

Date: JUL. 5, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied for an immigrant visa 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, and under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), for accruing more than one year of unlawful presence in the United States.

The Director of the Nebraska Service Center denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application) as a matter of discretion, concluding that the record did not establish that the Applicant was statutorily eligible for a waiver of inadmissibility because the U.S. Department of State (DOS) had also found the Applicant was inadmissible under section 212(a)(2)(C)(i) of the Act for aiding or abetting the illicit trafficking of a controlled substance. We dismissed the Applicant's subsequent appeal, and a motion to reopen and reconsider, on the same ground.

The matter is now before us on a second combined motion to reopen and motion to reconsider. The Applicant submits documentation and contends that he merits discretionary approval of the waiver application.

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). Upon review, we will dismiss the motions.

I. LAW

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3).

We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

The issue before us is whether the Applicant has submitted new facts supported by documentary evidence sufficient to warrant reopening his appeal or established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy.

We dismissed the appeal based on a determination that the Applicant is inadmissible under section 212(a)(2)(C) of the Act and therefore statutorily ineligible for a waiver of inadmissibility. Section 212(a)(2)(C)(i) of the Act renders inadmissible any noncitizen who a consular officer or the Secretary of Homeland Security knows or has reason to believe is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. § 802), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so. There is no waiver available for this inadmissibility.

On motion, the Applicant submits documentation, from [redacted] 2022, establishing that he received a [redacted] from the Governor of Virginia for "having provided evidence of a commendable adjustment" after his 1989 conviction for Accessory After the Fact, and a [redacted] from the Governor of Virginia, "reducing his [the Applicant's] previously imposed sentence [for having been convicted of Accessory After the Face on [redacted] 1989] to 359 days."

While we acknowledge the documentation submitted with the instant motion, we again note that an individual may be deemed inadmissible under section 212(a)(2)(C)(i) of the Act even where there has been no admission and no conviction, so long as there is "reason to believe" they were involved in illicit trafficking of a controlled substance. *See Matter of Casillas-Topete*, 25 I&N Dec. 317, 321 (BIA 2010); *Matter of Favela*, 16 I&N Dec. 753, 756-57 (BIA 1979). Here, a DOS consular officer determined that there is reason to believe the Applicant has been involved in the illicit trafficking of a controlled substance and is inadmissible under section 212(a)(2)(C)(i) of the Act. Because the Applicant is residing abroad and applying for an immigrant visa, DOS makes the final determination concerning admissibility and eligibility for a visa.

The Applicant has not submitted new facts supported by documentary evidence sufficient to warrant reopening his appeal or established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy. Accordingly, the motions to reopen and reconsider are dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.