U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-D-M-M-

DATE: SEPT. 2, 2015

APPEAL OF NEW YORK DISTRICT OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF INADMISSIBILITY

The Applicant, a native and citizen of Venezuela, seeks a waiver of inadmissibility pursuant to section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h), in order to reside in the United States with her family. The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed crimes involving moral turpitude. The District Director, New York, New York, denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The Director concluded that the Applicant did not have a qualifying relative and denied the application accordingly. *Decision of District Director,* dated July 29, 2014.[1]

On appeal, the Applicant, through counsel, asserts that the Director failed to properly consider her qualifying relative son's significant health condition. She also asserts that almost 14 years have lapsed since she was arrested and she has been rehabilitated. *Brief in support of Form I-290B, Notice of Appeal or Motion*, filed September 2, 2014.

The record includes, but is not limited to: a brief, statements from the Applicant and her qualifying son, identity and relationship documents, medical records, a psychological assessment, financial records, and court documents. The entire record was reviewed and considered in rendering a decision on appeal.

Section 212(a)(2)(A) of the Act states in pertinent part:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
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> (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

[1] The record does establish that the Applicant has a qualifying relative, her U.S. citizen son.

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

> [M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....
>
> In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The record reflects that between 1995 and 2000, the Applicant was convicted six times, five of which were for crimes related to prostitution. The record indicates that on [redacted] 1995, the Applicant was convicted for promoting prostitution in the fourth degree under New York Penal Law § 230.20. On [redacted] 1996, the Applicant was convicted for loitering for the purpose of engaging in a prostitution offense under New York Penal Law § 240.37. On [redacted] 1997, she was convicted of trespass, under New York Law § 140.05. On [redacted] 1998, she was convicted for promoting prostitution in the third degree under New York Penal Law § 230.25. On [redacted] 1998, she was convicted under New York Penal Law § 230.20 for promoting prostitution in the fourth degree. On [redacted] 2000, she was convicted for attempted promoting of prostitution in the third degree in violation of New York Penal Law § 230.25, for acts which occurred on or before [redacted] 2000, the date of her arrest.

At the time of the Applicant's conviction, New York Penal Law § 230.20 provided, in pertinent part, "A person is guilty of promoting prostitution in the fourth degree when he knowingly advances or profits from prostitution."

At the time of the Applicant's conviction, New York Penal Law § 230.25 stated:

> A person is guilty of promoting prostitution in the third degree when he knowingly
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> 1. Advances or profits from prostitution by managing, supervising, controlling or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more prostitutes; or
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> 2. Advances or profits from prostitution of a person less than nineteen years old.

Promoting prostitution in the third degree is a class D felony.

On appeal, the Applicant asserts that she is not inadmissible for having been convicted of two or more offenses, for which the aggregate sentences to confinement were five years or more. We concur. However, the Applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, for having been convicted of crimes involving moral turpitude. The Board of Immigration Appeals (BIA) has repeatedly found crimes promoting prostitution to be crimes involving moral turpitude. In *Matter of Lambert*, the BIA held that renting a room with knowledge that it would be used for the purpose of prostitution or lewdness was a crime involving moral turpitude. 11 I&N Dec. 340, 342 (BIA 1965). Similarly, in *Matter of A-*, the BIA held that the respondent's conviction under English law for being the landlord of a premises and a willful party to the continued use of such premises as a brothel involves moral turpitude. 5 I&N Dec. 546, 549 (BIA 1953). Likewise, in *Matter of W-*, the BIA found that the appellant's conviction for unlawfully keeping "a disorderly house, to wit, a common bawdy house" involves moral turpitude. 3 I&N Dec. 231, 231-32 (BIA 1948). The Applicant does not contest this finding of inadmissibility. Thus, we will not disturb the decision of the Director. However, the Applicant is eligible for a waiver under section 212(h)(1)(B) of the Act, as the events which led to her convictions occurred more than 15 years ago.

Section 212(h) of the Act provides, in pertinent part:

> The Attorney General [now Secretary of Homeland Security (Secretary)] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> > (1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that --
> >
> > > (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
> > >
> > > (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
> > >
> > > (iii) the alien has been rehabilitated; or
> >
> > (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

Section 212(h)(1)(A) of the Act provides that the Secretary may, in his discretion, waive the application of subparagraph (A)(i)(I) of subsection (a)(2) if the activities for which the alien is

inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status. An application for admission to the United States is a continuing application, and admissibility is determined on the basis of the facts and the law at the time the application is finally considered. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992).

Since the events giving rise to the criminal convictions for which the Applicant was found inadmissible occurred more than 15 years ago, the inadmissibility may be waived under section 212(h)(1)(A) of the Act. Section 212(h)(1)(A) of the Act requires that the Applicant's admission to the United States not be contrary to the national welfare, safety, or security of the United States, and that she has been rehabilitated.

The record reflects that the Applicant has resided in the United States since February 1996. She has three adult children. The record includes a statement and psychological assessment from one of the Applicant's sons. These documents indicate that the Applicant provides her son with emotional support. In particular, her son attests to the Applicant providing him with emotional support after he suffered serious injuries in a car accident and when he was going through a divorce. The record also indicates that the Applicant is self-employed but has not filed income tax returns, presumably because her income fell below the filing threshold. The record does not indicate that the Applicant's admission to the United States is contrary to the national welfare, safety or security of the United States and the record does indicate that the Applicant has been rehabilitated. Thus, the Applicant has established that she qualifies for a waiver under section 212(h)(1)(A) of the Act.

The Applicant has also established that she warrants a waiver as a matter of discretion because the favorable factors in her application outweigh the unfavorable factors. The favorable factors in the Applicant's case include the Applicant's ties to her U.S. citizen son and the emotional hardship he would suffer as a result of her inadmissibility. The Applicant's son states that he would suffer emotionally as a result of separation and as a result of worrying about his mother's safety in Venezuela in the event she was forced to relocate. In addition, the Applicant has had no criminal record for 15 years. The negative factors in the Applicant's case are her six criminal convictions and her period of unauthorized presence in the United States. The record indicates that the positive factors outweigh the negative in this case so a positive exercise of discretion is appropriate.

In discretionary matters, the Applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the Applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.

Cite as *Matter of A-D-M-M-*, ID# 12275 (AAO Sept. 2, 2015)