



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

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

MATTER OF G-R-E-S-

DATE: SEPT. 4, 2015

APPEAL OF WASHINGTON FIELD OFFICE DECISION

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

The Applicant is a native and citizen of Bolivia, who was found to be inadmissible to the United States 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 admitting to committing a crime involving moral turpitude. The Field Office Director, Washington Field Office, denied the waiver application. The Applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his family.

The matter is now before us on appeal. The appeal will be dismissed as the waiver application is not necessary.

The Field Office Director found that the Applicant failed to establish that his qualifying relatives would experience extreme hardship as a consequence of his inadmissibility and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated December 10, 2014.

On appeal, the Applicant, through counsel, asserts that he is not inadmissible and that he has established that his qualifying relatives will suffer extreme hardship if his application is denied. He alternatively asserts that no showing of extreme hardship is required for the grant of a waiver if the criminal activity for which the alien is found inadmissible occurred more than 15 years before the date of his application for adjustment of status to permanent residence. *Brief in support of Form I-290B, Notice of Appeal or Motion*, filed January 9, 2015.

The record contains, but is not limited to: medical records; identity and relationship documents; business documents; financial records; statements from the Applicant, his wife, their friends; and reports about conditions in Bolivia, including a Department of State travel advisory. The entire record was reviewed and considered in rendering this decision.

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 –

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

The Applicant's former employer notified the U.S. Department of State that the Applicant and a co-worker had taken \$50,000 from his company and indicated that he had initiated legal action against the Applicant.

The Applicant wrote:

I was involved in a transaction in Bolivia. My co-worker and I sold [air conditioning equipment] belonging to our employer without his knowledge. We were discovered and I agreed to repay my employer. My employer and I reached an agreement and I complied fully with repaying the debt. There were no charges filed against me.

The record does not include evidence that any legal action was initiated against the Applicant. The Applicant provides evidence that he and his former employer resolved the issue and Applicant that he repaid the debt.

The Field Office Director found the Applicant's testimony to constitute an admission to having committed acts constituting the essential elements of the crime of fraud. While we agree that inadmissibility under section 212(a)(2)(A)(i)(I) of the Act may be based on an admission to having engaged in acts that constitute the essential elements of a crime involving moral turpitude, we do not find the record to contain sufficient evidence to establish that the Applicant in the present case has made such an admission.

In order for the admission of a crime or acts constituting the essential elements of a crime to be properly used as a basis for inadmissibility, three conditions must be met: 1) the admitted acts must constitute the essential elements of a crime in the jurisdiction in which they occurred; 2) the respondent must have been provided with the definition and essential elements of the crime, in understandable terms, prior to making the admission; and 3) the admission must have been voluntary. *Matter of K-*, 7 I&N Dec. 594, 597 (BIA 1957); *see also Matter of G-M-*, 7 I&N Dec. 40, 70 (BIA 1955).

The Field Office Director did not follow the procedures articulated by the BIA in making the finding of inadmissibility. The record of proceedings contains a video recording of the Applicant's adjustment interview. The interviewing officer failed to give the Applicant an adequate definition of the crime of fraud and to explain the definition to the Applicant. Furthermore, the admission must have constituted the essential elements of fraud in the Bolivia, the jurisdiction where the alleged crime occurred. In a letter, the Applicant acknowledges that he sold property belonging to his employer and kept the proceeds, but for the reasons stated above, these statements do not constitute admitting to committing the essential elements of fraud as they are defined by the Bolivian Criminal Code. We find no sworn statement or other formal written record from the interview that establishes what the Applicant understood prior to his admission, that he admitted to all the factual elements of fraud as defined in Bolivia, or that his admission was explicit, unequivocal and unqualified.

Accordingly, the Applicant's statements regarding the events that gave rise to a finding of inadmissibility are not sufficient to establish that he has admitted to the essential elements of a crime involving moral turpitude.

The Field Office Director noted that the Applicant made a material misrepresentation when he answered "no" to the question as to whether he had ever knowingly committed a crime involving moral turpitude for which he had not been arrested. U.S. Citizenship and Immigration Services interprets the term "willfully" as knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the factual claims are true. In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *See generally Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956). To be willful, a misrepresentation must be made with knowledge of its falsity. 7 I&N Dec. at 164. To determine whether a misrepresentation was willful, we examine the circumstances as they existed at the time of the misrepresentation, and we "closely scrutinize the factual basis" of a finding of inadmissibility for fraud or misrepresentation because such a finding "perpetually bars an alien from admission." *Matter of Y-G-*, 20 I&N Dec. 794, 796-97 (BIA 1994) (citing *Matter of Shirdel*, 19 I&N Dec. 33, 34-35 (BIA 1984)); *see also Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28-29 (BIA 1979). With relevance to the present matter, we acknowledge that the term "moral turpitude" is not in common usage, and it is unlikely that the average person is aware of its meaning and application in U.S. immigration law. We do not find the Applicant made a willful material misrepresentation to gain an immigration benefit.

In the present case, the record fails to establish that the Applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act. Accordingly, the Applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The Applicant's waiver application is thus unnecessary and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

Cite as *Matter of G-R-E-S-*, ID# 11313 (AAO Sept. 4, 2015)