U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-I-

DATE: SEPT. 11, 2015

APPEAL OF WASHINGTON, D.C. FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Pakistan, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (INA, or the Act) § 212(h), 8 U.S.C. § 1182(h). The Field Office Director, Washington, D.C., denied the application. The matter is now before us on appeal. The appeal will be sustained.

The record establishes that the Applicant was first admitted to the United States on an L1 visa on November 14, 1987. He subsequently filed a Form I-140, Petition for an Immigrant Worker, which was approved on October 16, 1989. On November 27, 1989, the Applicant was notified by the then, Immigration and Nationalization Service, that he was unable to adjust to lawful permanent resident status and needed to return to Pakistan to apply for an immigrant visa. At some point the Applicant left the United States and reentered with an L1 visa on October 4, 1991. The Applicant again applied for adjustment of status while in the United States, and on February 11, 1992, at the Washington Field Office, the Applicant's application for adjustment of status was approved.

In April 1995, the Applicant pled guilty and was convicted in the United States District Court of Conspiracy to Defraud the United States, a violation of 18 USC § 371, False Statements to U.S. Customs, a violation of 18 USC §§ 542 and 2, and Filing False Income Tax Returns in violation of 26 USC § 7206(1). For these crimes the Applicant was sentenced to 30 months in federal prison. The applicant was later charged with deportability for having been convicted of an aggravated felony as defined in section 101(a)(43)(m)(i) of the Act, the Applicant was placed in removal proceedings and ordered removed. The Applicant departed the United States on May 19, 1998.

In 2012, the Applicant applied for an immigrant visa based on an approved Form I-130, Petition for Alien Relative, filed by his U.S. citizen spouse. On October 5, 2012, the Applicant was issued an OF-194 or visa refusal worksheet. This worksheet indicated that the Applicant was 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 having been convicted of a crime involving moral turpitude. On June 12, 2013, the Applicant filed a Form I-601, Application for Waiver of Ground of Inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h).

On March 26, 2014, the Field Office Director found the Applicant ineligible for a waiver under section 212(h) of the Act because he had failed to establish extreme hardship to a qualifying relative as a result of his inadmissibility. The application was denied accordingly.

On appeal, the Applicant submits a brief, statements from the Applicant's family members, biographic and immigration documentation pertaining to the Applicant's family members, medical documentation, academic documentation pertaining to the Applicant's daughter, police character certificates in regard to the Applicant, a medical fitness certificate pertaining to the Applicant, employment letters for the Applicant, and financial documentation. The entire record was reviewed and considered in rendering this decision.

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

> (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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

> The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .
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> (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –
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> (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,
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> (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
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> (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 Attorney General [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 . . .; and
>
> (2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.
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> No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than seven years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

In a May 12, 2015 decision, the Board of Immigration Appeals (BIA), citing "the overwhelming circuit court authority" and the importance of "uniformity in the application of the immigration laws," determined that an alien who adjusted status in the United States, and who had not entered as a lawful permanent resident, is not barred from establishing eligibility for a waiver of inadmissibility under section 212(h) of the Act as a result of an aggravated felony conviction. *Matter of J-H-J-*, 26 I&N Dec. 563, 564-5 (BIA 2015) (citing *Matter of Small*, 23 I&N Dec. 448, 450 (BIA 2002)). The record establishes that the Applicant adjusted status in 1992 rather than entering the United States as a lawful permanent resident. The Applicant is thus eligible for a waiver of inadmissibility under section 212(h) of the Act.

Based on a thorough review of the record, we concur with the Field Office Director that the Applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Fraud has, as a general rule, been held to involve moral turpitude. The U.S. Supreme Court in *Jordan v. De George* concluded that "[w]hatever else the phrase 'crime involving moral turpitude' may mean in peripheral cases, the decided cases make it plain that crimes in which fraud was an ingredient have always been regarded as involving moral turpitude. . . . The phrase 'crime involving moral turpitude' has without exception been construed to embrace fraudulent conduct." 341 U.S. 223, 232 (1951).

Crimes that include as a requirement an intent to defraud have been held to involve moral turpitude. *Matter of Adetiba*, 20 I&N Dec. 506, 512 (BIA 1992). In *Matter of Flores*, the Board also held that uttering and selling false or counterfeit paper related to the registry of aliens was a crime involving

moral turpitude, even though intent to defraud was not an explicit statutory element. 17 I&N Dec. 225, 230 (BIA 1980). The Board explained that "where fraud is inherent in an offense, it is not necessary that the statute prohibiting it include the usual phraseology concerning fraud in order for it to involve moral turpitude." *Id.* at 228; *see also Matter of R--*, 5 I&N Dec. 29 (BIA 1952; A.G. 1952; BIA 1953); *Matter of Kochlani*, 24 I&N Dec. 128, 130-131 (BIA 2007) ("[C]ertain crimes are inherently fraudulent and involve moral turpitude even though they can be committed without a specific intent to defraud.")

The Board has also held that in cases involving fraud of the government, the government need not have lost money or property in order for the crime to involve moral turpitude. *Matter of S--*, 2 I&N Dec. 225 (BIA 1944). Instead, the mere act of obstructing an important function of a department of the government by deceitful means is sufficient to find moral turpitude. *Matter of Flores*, 17 I&N Dec. at 229; *see also Matter of D--*, 9 I&N Dec. 605, 608 (BIA 1962); *Matter of E--*, 9 I&N Dec. 421, 423-24 (BIA 1961).

Since the activities that are the basis for the Applicant's criminal convictions occurred more than 15 years ago, he is eligible for a waiver 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 he has been rehabilitated.

The Applicant contends that numerous favorable factors warrant approval of his application. The Applicant first outlines the close family ties he has in the United States, including the presence of his U.S. citizen wife, his brother, and his children. Further, the Applicant maintains that his convictions occurred more than twenty years ago, which indicates rehabilitation. The Applicant further outlines the hardships his wife and children are experiencing as a result of his inadmissibility.[1]

In her own statement, the Applicant's U.S. citizen spouse contends that she is experiencing emotional hardship as a result of her husband's inadmissibility. She maintains that she feels alone and vulnerable and misses her husband a lot. She asserts that country conditions in Pakistan are problematic due to aggravating terrorism. The record establishes that the Applicant and his spouse have been married for over 40 years. In separate statements, the Applicant's children outline the hardships they are experiencing as a result of the Applicant's inadmissibility, including the lack of financial resources and the emotional hardship of not having their father in the United States. In addition, the Applicant has submitted letters and affidavits from community members, political leaders, and business associates, in Pakistan and in the United States, attesting to the Applicant's character and rehabilitation. The Applicant has also submitted documentation establishing the lack of a criminal record in Pakistan. Finally the Applicant has submitted documentation regarding his business ownership, specifically, a surgical equipment manufacturing supply business, in Pakistan.

[1] Although extreme hardship to a qualifying relative is not required for purposes of a section 212(h)(1)(A) waiver of inadmissibility, we note that hardship is a relevant consideration for a discretionary determination under section 212(h)(2) of the Act.

The record does not indicate that the Applicant's admission to the United States would be contrary to the national welfare, safety, or security of the United States. Furthermore, the Applicant has shown by a preponderance of the evidence that he has been rehabilitated. As discussed above, there is no evidence that he has been convicted of a crime involving moral turpitude since 1995, more than 20 years ago. The record shows that during the ensuing years, the Applicant has not violated any immigration laws and has not been convicted of any crimes while residing in Pakistan. The record includes attestations to his good moral character and does not indicate that the Applicant has a propensity to engage in further criminal activity. Accordingly, the Applicant has shown that he meets the requirements of section 212(h)(1)(A) of the Act.

Demonstrating that his admission to the United States is not contrary to the national welfare, safety, or security of the United States and that he has been rehabilitated are requirements for eligibility, but once established are but one favorable discretionary factor to be considered in determining whether a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996). In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-,* 7 I&N Dec. 582 (BIA 1957). The BIA has further stated:

> In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, supra, at 301. This office must "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300.

The favorable factors in this matter are the Applicant's U.S. citizen spouse and children; the hardships the Applicant's family is experiencing as a result of the Applicant's inadmissibility, as discussed in detail above; the approved Form I-130, Petition for Alien Relative, filed on behalf of the Applicant by his U.S. citizen wife; support letters from individuals in the United States and Pakistan attesting to the Applicant's good character; the Applicant's apparent lack of a criminal record since returning to Pakistan in 1998; the existence of the Applicant's business in Pakistan, and his business

roles as chief executive and director of sales and marketing since 2000; the payment of taxes while in the United States; business ownership; the Applicant's expressions of repentance and reformation; and the passage of more than two decades since the Applicant's last criminal conviction. The unfavorable factors in this matter are the Applicant's criminal convictions after acquiring lawful permanent resident status, his removal from the United States, and periods of unlawful presence and employment while in the United States.

The crimes and immigration violations committed by the Applicant were serious in nature. Nonetheless, we find that the Applicant has established that the favorable factors outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.

Cite as *Matter of M-I-*, ID# 10606 (AAO Sept. 11, 2015)