U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-D-

DATE: JAN. 27, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

APPLICATION: FORM I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS

The Applicant seeks lawful permanent residency based upon his T-1 nonimmigrant status. *See* Immigration and Nationality Act (the Act) § 245(l); 8 U.S.C. § 1255(l). The Director, Vermont Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

I. APPLICABLE LAW

Section 245(l)(1) of the Act provides that the Secretary of Homeland Security may, at his discretion, adjust the status of an alien admitted into the United States as a T-1 nonimmigrant. Section 245(l)(1) provides, in pertinent part, that in order to qualify for adjustment of status, a T-1 nonimmigrant must establish that he or she:

> (A) has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a nonimmigrant under section 101(a)(15)(T)(i), or has been physically present in the United States for a continuous period during the investigation or prosecution of acts of trafficking and that, in the opinion of the Attorney General, the investigation or prosecution is complete, whichever period of time is less;
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> (B) . . . has, throughout such period, been a person of good moral character; and
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> (C)(i) has, during such period, complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking . . . [or]
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> > (ii) the alien would suffer extreme hardship involving unusual and severe harm upon removal from the United States . . . .

The T-1 nonimmigrant must also be admissible to the United States. Section 245(l)(2) of the Act.

A T-1 nonimmigrant "shall be considered to have failed to maintain continuous physical presence in the United States" under section 245(l)(1)(A) of the Act if he or she has departed from the United

States for any single period in excess of 90 days or periods in the aggregate exceeding 180 days, unless such absences are excused. *See* Section 245(l)(3) of the Act; 8 C.F.R. § 245.23(a)(3). As supporting evidence with the Form I-485, Application to Register Permanent Residence or Adjust Status, the T-1 nonimmigrant must submit, in pertinent part, a photocopy of all pages of his or her passport valid during the three years since admission as a T-1 nonimmigrant, or an explanation of why he or she does not have a passport. 8 C.F.R. § 245.23(e)(1)(v), (e)(2)(i). Additionally, the T-1 nonimmigrant must submit a signed statement attesting to his or her continuous physical presence during the required period, as well as supplemental supporting evidence as described in 8 C.F.R. § 245.22, or an explanation as to why such evidence is not available. 8 C.F.R. § 245.23(e)(2)(i).

Section 101(f) of the Act, 8 U.S.C. § 1101(f), states, in pertinent part, that:

> No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was –
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> . . .
>
> (3) a member of one or more of the classes of persons, whether inadmissible or not, described in . . . subparagraphs (A) and (B) of section 212(a)(2) . . . if the offense described therein, for which such person was convicted . . . was committed during such period . . . .
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> The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character. . . .

As referenced in section 101(f)(3) of the Act, section 212(a)(2)(A) of the Act includes "any alien 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 . . . ." 8 U.S.C. § 1182(a)(2)(A)(i)(I).

As evidence of good moral character, the T-1 nonimmigrant must submit an affidavit attesting to his or her good moral character and police clearances or similar background checks from each locality or state in which he or she has resided for at least six months since being granted T-1 nonimmigrant status. 8 C.F.R. § 245.23(g).

To establish compliance with reasonable requests for assistance in the investigation or prosecution of human trafficking, the T-1 nonimmigrant must provide "a document issued by the Attorney General or his designee" certifying such compliance. 8 C.F.R. § 245.23(f)(1). In the alternative, the T-1 nonimmigrant may submit evidence to establish that he or she "would suffer extreme hardship involving unusual or severe harm upon removal from the United States." 8 C.F.R. § 245.23(f)(2).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Applicant, a native and citizen of Haiti, last entered the United States on October 6, 2008, as an H-2A nonimmigrant worker. He filed a Form I-914, Application for T Nonimmigrant Status, on January 20, 2010. The Director granted T-1 nonimmigrant status to the Applicant valid from June 21, 2010 until June 20, 2014. The Applicant filed a Form I-485 on November 4, 2013. The Director denied the Form I-485 based on a finding that the Applicant did not establish that he was physically present in the United States for at least three years since being admitted as a T-1 nonimmigrant, was a person of good moral character, and complied with reasonable requests for assistance in the investigation or prosecution of human trafficking or would suffer extreme hardship upon removal from the United States. On appeal, the Applicant submits a brief and additional evidence.

III. ANALYSIS

A. Continuous Physical Presence

The preponderance of the evidence does not demonstrate that the Applicant has been continuously physically present in the United States for at least three years since being admitted as a T-1 nonimmigrant on June 21, 2010. On appeal, the Applicant submits a photocopy of his Haitian passport, valid from August 2007 to August 2012. However, pages 6 and 7 of the passport are not included in the Applicant's submission. The Applicant has not complied with the requirement at 8 C.F.R. § 245.23(e)(1)(v) that he submit a photocopy of all pages of his passport. Additionally, the Applicant did not submit a signed statement attesting to his continuous physical presence during the requisite period, as required by 8 C.F.R. § 245.23(e)(2)(i). Although the Applicant also submits supporting documentary evidence relating to his continuous physical presence, he has not submitted the required evidence as outlined in the regulation. Therefore, the Applicant has not met the continuous physical presence requirement at section 245(l)(1)(A) of the Act.

B. Good Moral Character

The Applicant has not submitted the required documentation to establish that he is a person of good moral character.

On appeal, the Applicant submits evidence that he was arrested on , 2014, in Maryland, and convicted on , 2014 of failure to obey a reasonable and lawful order by a law enforcement officer in violation of Maryland Criminal Law section 10-201(c)(3). The Applicant was sentenced to 30 days in prison, of which all 30 days were suspended, one year of probation, and a fine. The Applicant also provides evidence that, on 2012, he pled guilty to exceeding the maximum speed limit in violation of Maryland Transportation Law section 21-801.1 for incidents that occurred on December 22nd and 26th, 2011.

The Applicant also provides a personal statement, dated December 8, 2014, in which he describes, in pertinent part, the circumstances surrounding his arrest on 2014. He explains that the

arrest was the result of a misunderstanding at a retail store due to a language barrier. The Applicant states that he had a misunderstanding with the store clerk and a police officer due to the Applicant's difficulty communicating in and understanding English, and that "it was never [his] intention to cause any sort of disturbance or fail to obey the police officer's demand." The Applicant further asserts that he is "not, by nature, a disrespectful or defiant person." Additionally, the Applicant submits supporting statements from four friends who attest to the Applicant's good moral character.

Pursuant to section 101(f)(3) of the Act, an individual who has been convicted of a crime involving moral turpitude cannot establish his good moral character. A crime involving moral turpitude is generally defined as "conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality . . . ." *Matter of Perez-Contreras*, 20 I&N Dec. 615, 618 (BIA 1992). Under Maryland law, failure to obey a reasonable and lawful order by a law enforcement officer in violation of Maryland Criminal Law section 10-201(c)(3) is a form of disorderly conduct which prohibits "willfully fail[ing] to obey a[n] . . . order that a law enforcement officer makes to prevent a disturbance to the public peace." Disorderly conduct has been found to be a crime of moral turpitude only in limited circumstances. *See, e.g.*, *Hudson v. Esperdy*, 290 F.2d 879 (2d Cir. 1961) (loitering for lewd purposes); *Matter of Alfonso-Bermudez*, 12 I&N Dec. 225 (BIA 1967) (soliciting for lewd purposes).

Even if we concluded that the Applicant's conviction is for a crime involving moral turpitude, the Applicant would fall under the petty offense exception at section 212(a)(2)(A)(ii)(II) of the Act. This section provides an exception for a conviction for a crime involving moral turpitude where the individual was convicted of only one crime, the maximum possible penalty for which did not exceed imprisonment for one year and the individual was not sentenced to imprisonment for more than six months. In *Matter of Garcia-Hernandez*, 23 I&N Dec. 590, 593 (BIA 2003), the Board of Immigration Appeals (Board) held that where a conviction falls under the petty offense exception at section 212(a)(2)(A)(ii)(II) of the Act, the convicted individual "cannot be considered . . . an alien 'described in' section 212(a)(2)(A) of the Act for purposes of the good moral character definition in section 101(f)(3)." Under Maryland Criminal Law section 10-201(d), the maximum possible penalty for a conviction under Maryland Criminal Law section 10-201 is "imprisonment not exceeding 60 days or a fine . . . or both." Therefore, the Applicant's conviction falls under the petty offense exception.

The Applicant's two convictions for speeding under the Maryland Transportation Law do not preclude the Applicant from qualifying for the petty offense exception. The Board stated in *Matter of Garcia-Hernandez* that the phrase "only one crime" at section 212(a)(2)(A)(ii) of the Act refers to "only one crime involving moral turpitude." 23 I&N Dec. at 594. Traffic violations such as speeding are not typically considered crimes involving moral turpitude because they are not "inherently base, vile, or depraved" or "accompanied by a vicious motive or corrupt mind." *Matter of Perez-Contreras*, 20 I&N Dec. at 618. Therefore, the Applicant's convictions do not preclude him from establishing his good moral character under section 101(f)(3) of the Act. Furthermore, the statements of the Applicant and his friends support his claim of good moral character.

However, the Applicant has not submitted police clearances or background checks from each locality or state in which he resided for at least six months since being granted T-1 nonimmigrant status, as required by 8 C.F.R. § 245.23(g). The Applicant submitted a criminal history record check from the state of Maryland. However, evidence in the record of proceedings also indicates that the Applicant resided in Delaware in 2010, 2011, and 2013, and in Florida in 2010. The length of the Applicant's residence in Delaware and Florida is not clear from the record, but his pay stubs and other documentary evidence indicate that he resided and worked in each state. The Applicant did not provide a police clearance or similar background check from Delaware or Florida, or information sufficient to establish that he did not reside in Delaware or Florida for at least six months since being granted T-1 nonimmigrant status. Therefore, the Applicant did not submit required documentary evidence to establish that he is a person of good moral character under section 245(l)(1)(B) of the Act.

C. Compliance With Reasonable Requests for Assistance in the Investigation or Prosecution of Human Trafficking or Extreme Hardship

The Applicant has not established that he complied with reasonable requests for assistance in the investigation or prosecution of human trafficking since he was admitted as a T-1 nonimmigrant. Section 245(l)(C)(i) of the Act.

As evidence to support his claim that he meets this requirement, the Applicant submits on appeal a letter from the organization which represented him when he filed his Form I-914 to obtain T-1 nonimmigrant status. The letter, dated September 24, 2009, is addressed to Department of Homeland Security, Immigration and Customs Enforcement, Florida. The letter describes the human trafficking of which the Applicant and several other individuals were victims. In the letter, requests that sign the Applicant's Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons. did not sign the Form I-914, Supplement B. Although submission of a signed Form I-914, Supplement B is not required to obtain T-1 nonimmigrant status or for a T-1 nonimmigrant to adjust status, the Applicant must provide with the Form I-485, "a document issued by the Attorney General or his designee" certifying that the Applicant complied with reasonable requests for assistance in the investigation or prosecution of human trafficking. is not a designee of the Attorney General, and the record of proceedings does not indicate that any official certified the Applicant's assistance in the investigation or prosecution of human trafficking. Furthermore, wrote the letter in 2009, before the Applicant obtained T-1 nonimmigrant status. Therefore, the letter does not reflect the Applicant's compliance with reasonable requests for assistance in the investigation or prosecution of human trafficking since he obtained T-1 nonimmigrant status, as required by section 245(l)(C)(i) of the Act.

Although a T-1 nonimmigrant may, in the alternative, meet the requirement at section 245(l)(1)(C)(ii) of the Act by demonstrating that he would suffer extreme hardship involving unusual or severe harm if removed from the United States, the Applicant does not assert that he would suffer such hardship. 8 C.F.R. § 245.23(f)(2).

D. Discretion

The Applicant bears the burden of showing that discretion should be exercised in his favor. 8 C.F.R. § 245.23(e)(3). Generally, favorable factors such as family ties, hardship, and length of residence in the United States may be sufficient to merit a favorable exercise of administrative discretion. However, where adverse factors are present, it will be necessary for the applicant to offset these factors by showing sufficient mitigating factors. *Id.* The Applicant has provided a sufficient explanation for his conviction and he has submitted supporting letters from friends to outweigh the negative factor of his conviction but has not otherwise addressed other favorable factors to be considered and demonstrated that we should exercise discretion in his favor.

IV. CONCLUSION

In these proceedings, the Applicant bears the burden of proving eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of M-D-*, ID# 15421 (AAO Jan. 27, 2016)