



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

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

In Re: 13333840

Date: MAR. 8, 2021

Appeal of West Palm Beach, Florida Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h).¹

The Director of the West Palm Beach Field Office, Royal Palm Beach, Florida denied the application, concluding that the Applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude (CIMT). The Director then determined that the Applicant was not eligible for a waiver because the record did not show that he has a qualifying relative.

On appeal, the Applicant asserts that the Director erred by not considering his rehabilitation because the criminal incident cited was more than 15 years before he filed his adjustment application.

The Applicant bears the burden of proof in these proceedings 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). This office reviews the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will remand the matter to the Director for the entry of a new decision.

I. LAW

Any foreign national 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 is inadmissible. Section 212(a)(2)(A) of the Act. Individuals found inadmissible under section 212(a)(2)(A) of the Act for a crime involving moral turpitude may seek a discretionary waiver of inadmissibility under section 212(h) of the Act. Section 212(h)(1)(A) of the Act provides for a discretionary waiver where the

¹ The Applicant has applied to adjust status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act (CAA) of 1966, which provides for the adjustment of status of an alien who, in part, is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959. The record reflects that the Applicant was paroled into the United States in 2016.

activities occurred more than 15 years before the date of the application if admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and the foreign national has been rehabilitated. Section 212(h)(1)(B) of the Act provides for a waiver if denial of admission would result in extreme hardship to a United States citizen or lawful permanent resident spouse, parent, son, or daughter.

II. ANALYSIS

The Director found the Applicant inadmissible for a CIMT, which the Director identified as the Applicant's 2002 conviction in Cuba for battery and disorderly conduct for which he was sentenced to two years and six months that was suspended for correctional work. On appeal, the Applicant does not contest the inadmissibility finding, submit additional evidence related to his conviction, or provide detail of the events leading to his arrest. Rather, the Applicant argues that the incident occurred in 2002, more than 15 years before he filed his adjustment application, and that he has been rehabilitated. The Applicant maintains that he has not committed any crimes in the United States, is employed, and assists his family. The record contains financial records, civil documents, and letters of support for the Applicant.

We agree with the Applicant's assertion that the Director failed to consider rehabilitation as the record reflects that more than 15 years have passed since the conduct that led to his inadmissibility, his 2002 conviction, and that he is therefore eligible to seek a waiver under section 212(h)(1)(A) of the Act. Thus, we find it appropriate to remand the matter to the Director to review the evidence to determine whether the Applicant has established his rehabilitation. If the Director finds the Applicant has demonstrated rehabilitation, then the Director must consider whether the Applicant merits a favorable exercise of discretion.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.