

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: MAY 29 2014

Office: ATLANTA FIELD OFFICE

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Nigeria who was found by the director to be inadmissible 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. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and is applying for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his lawful permanent resident spouse and U.S. citizen children.

The field office director determined that the applicant failed to establish that his qualifying relatives would experience extreme hardship as a consequence of his inadmissibility, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Director*, dated June 25, 2010.

On appeal, filed on November 23, 2010, and received by the AAO on December 27, 2013, the applicant's then-counsel asserted in the Notice of Appeal (Form I-290B) that the director erred in denying the waiver application. With the appeal counsel submitted a brief, medical information related to the applicant's spouse, and copies of previously-submitted material. The record contains statements from the applicant's spouse and children, a note from the spouse's medical doctor, financial documentation, country information for Nigeria, and letters of support for the applicant from members of his community. The entire record was reviewed and considered in rendering a decision on the appeal.

The AAO will first address the finding of inadmissibility for having been convicted of a crime involving moral turpitude.

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 –
 - (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 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.

The record reflects that the applicant was convicted in the United States District Court for the Southern District of Florida on April 29, 1994, on one count under 18 U.S.C. § 371 Conspiracy to Defraud HUD and four counts under 18 U.S.C. § 1001 False Statement. The applicant was sentenced to 10 months on each count running concurrently, a fine of \$10,578, restitution of \$21,157 to the [REDACTED] and supervised release of three years. The record reflects that the applicant was convicted for events that concluded on August 6, 1992.

The statutes under which the applicant was convicted provide:

18 U.S.C. § 371 - Conspiracy to Defraud the United States -

"[i]f two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose.

18 U.S.C. § 1001 - Statements or entries generally -

- (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—
- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
 - (2) makes any materially false, fictitious, or fraudulent statement or representation; or
 - (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years. . . .

Fraud has, as a general rule, been held to involve moral turpitude. The U.S. Supreme Court in *Jordan v. De George* concluded that “Whatever 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. . . . Fraud is the touchstone by which this case should be judged. The phrase ‘crime involving moral turpitude’ has without exception been construed to embrace fraudulent conduct.” 341 U.S. 223, 232 (1951). Therefore, the applicant’s conviction for fraud is a crime involving moral turpitude.

Section 212(h)(1)(A) of the Act provides that certain grounds of inadmissibility under section 212(a)(2)(A)(i)(I)-(II), (B), and (E) of the Act may be waived in the case of an alien who demonstrates to the satisfaction of the Attorney General that:

- (i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or 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.

In the present matter, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. While the applicant's conviction for fraud is significant, the record does not show that he has ever engaged in violent behavior or that he has engaged in criminal or illegal activity following his conduct of 1992 which resulted in his criminal conviction more than 20 years ago. The record does not reflect that admitting the applicant would be contrary to the national welfare, safety, or security of the United States.

The record shows that the applicant has been married since 1981 to his lawful resident spouse who states that she is emotionally and financially dependent on the applicant in part due to her own ongoing health condition. The applicant has three U.S. citizen children, two working and one in college, each of whom has submitted to the record statements of support for the applicant describing the emotional and financial support he provides for them. The record also contains certificates of appreciation for the applicant's church activities and performance as well as letters of support from long-time friends describing him as a responsible, conscientious, community-oriented person active with his family and church. The record further contains records for years of tax payments by the applicant and shows that the applicant and his spouse own their home.

The applicant has shown by a preponderance of the evidence that he has been rehabilitated. As noted above, there is no evidence that the applicant has been convicted of a crime involving moral turpitude since 1994 and no evidence that he has engaged in any criminal activity since 1992, more than 20 years ago. The record shows that the applicant is employed, is active in his church, provides emotional and economic support to his spouse and children, and is regarded by others as having good moral character and presence in the community. The record does not indicate that the applicant has a propensity to engage in further criminal activity of any kind. Accordingly, the applicant has shown that he meets the requirement of section 212(h)(1)(A)(iii) of the Act. Based on the foregoing, the applicant has shown that he is eligible for consideration for a waiver under section 212(h)(1)(A) of the Act.

In determining whether the applicant warrants a favorable exercise of discretion under section

212(h) of the Act, the Secretary must weigh positive and negative factors in the present case. The negative factors in this case are the applicant's conviction in 1994 of a crime involving moral turpitude and his immigration violation for remaining in the United States beyond the period authorized at his 1984 entry to the United States with a nonimmigrant visa. The positive factors in this case include hardship to the applicant's spouse as a result of the applicant's inadmissibility; the needed emotional and economic support the applicant provides his spouse; the applicant's significant family and community ties to the United States; the applicant's payment of taxes in the United States; and the lack of a further criminal record in more than 20 years. While the applicant's criminal conviction and immigration violations cannot be condoned, the positive factors in this case outweigh the negative factors.

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.