



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

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

MATTER OF A-O-B-

DATE: DEC. 11, 2015

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of Nigeria, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(h), 8 U.S.C. § 1182(h). The Director, Nebraska Service Center, denied the application. We dismissed a subsequent appeal, and the matter is now before us on motion to reconsider. The motion to reconsider will be denied.

The Applicant was found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. The Applicant seeks a waiver of inadmissibility under section 212(h) of the Act in order to return to the United States to reside with his U.S. citizen wife and children.

The Director determined that the Applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. The Director further noted that the Applicant was statutorily ineligible for the waiver due to having been convicted of an aggravated felony after admission to the United States as a lawful permanent resident. The Director denied the Form I-601 accordingly.

On appeal, we determined that the record established that the Applicant was convicted of an aggravated felony under section 101(a)(43)(G) of the Act for theft offenses for which the term of imprisonment was at least one year, and these convictions occurred after the Applicant's admission to the United States as a lawful permanent resident. Consequently, we concluded that the Applicant was permanently barred from obtaining a waiver under section 212(h) of the Act and no purpose would be served in examining hardship to his wife and children.

On motion, the Applicant maintains that our determination that no purpose would be served in examining hardship to the Applicant's wife and children was in error. 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 relevant part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . if –

. . .

(1) (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. . . .

*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. (emphasis added)*

As we previously noted in our decision to dismiss the appeal, the record establishes that on May 26, 2000, the Applicant was admitted to the United States as a lawful permanent resident. On [REDACTED] 2004, the Applicant was convicted of Theft by Shoplifting in violation of the *Official Code of Georgia Annotated* (O.C.G.A.), § 16-8-14 (2002) in the State Court of [REDACTED] State of Georgia. The Applicant was sentenced to twelve months confinement. On [REDACTED] 2007, the Applicant was convicted of Theft by Taking in violation of O.C.G.A. § 16-8-2 (2002) in the Superior Court of [REDACTED] State of Georgia. The Applicant was sentenced to three years confinement. On August 16, 2010, an immigration judge ordered the Applicant removed from the United States. On November 29, 2010, the Applicant was removed from the United States.

Section 101(a) of the Act states in pertinent part:

- (4) The term "aggravated felony" means—
  - (G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment at least one year. . . .

The record establishes that the Applicant was convicted of an aggravated felony under section 101(a)(43)(G) of the Act, for a theft offense for which the term of imprisonment was at least one year, and these convictions occurred after the Applicant's admission to the United States as a lawful permanent resident. Consequently, the Applicant is permanently barred from obtaining a waiver under section 212(h) of the Act.

Contrary to the Applicant's contention on motion, the Applicant is ineligible for a waiver of inadmissibility because of his aggravated felony convictions, regardless of whether he establishes that his wife and children would experience extreme hardship as a result of his inadmissibility or that he merits a favorable exercise of discretion.

We note that in a May 12, 2015 decision, the Board of Immigration Appeals 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 Board held that section 212(h) of the Act only precludes aliens who entered the United States as lawful permanent residents from establishing eligibility for a waiver on the basis of an aggravated felony conviction, withdrawing from its decisions in *Matter of Koljenovic*, 25 I&N Dec. 219 (BIA 2010), and *Matter of E.W. Rodriguez*, 25 I&N Dec. 784 (BIA 2012). The record establishes that the Applicant entered the United States as a lawful permanent resident and did not adjust status in the United States. As such, we reiterate on motion that the Applicant remains ineligible for a waiver of inadmissibility under section 212(h) of the Act.

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 not been met.

**ORDER:** The motion to reconsider is denied.

Cite as *Matter of A-O-B-*, ID# 14208 (AAO Dec. 11, 2015)