



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

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

MATTER OF L-B-R-

DATE: DEC. 11, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

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

The Applicant was found to be inadmissible to the United States pursuant to 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 was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) for having made material misrepresentations in seeking to procure visas and in procuring a visa, specifically, by failing to admit his criminal history on both his nonimmigrant visitor's visa application, which was approved, and again on his fiancé visa application. The Director denied the application, finding that although the Applicant established that his fiancée would suffer extreme hardship if his waiver was not granted, the evidence was insufficient to establish that the waiver should be granted as a matter of discretion. The Director further noted that the Applicant was ineligible for a waiver based on rehabilitation because the criminal activity, for which he was convicted, occurred within the last 15 years.

On appeal, the Applicant asserts that he is fully rehabilitated and that his misrepresentation can be attributed to poor legal advice he received. He further asserts that he made only one misrepresentation, not two. Finally, he states that he was convicted of only minor crimes and his favorable factors outweigh his unfavorable factors.

The record contains, but is not limited to: letters from the Applicant and his [REDACTED] attorney; declarations of the Applicant, his spouse, and her father; two physicians' letters; financial records; and criminal records. The entire record was reviewed and considered in rendering a decision on the appeal.

(b)(6)

Matter of L-B-R-

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

- (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 . . . 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.

(Citations omitted.)

The record shows that on [REDACTED] 2004, the Applicant was convicted for fraud in violation of chapter 9, section 1 of Sweden's penal code and for falsification of documents, in violation of chapter 14, section 1 of Sweden's penal code.

Sweden's penal code chapter 9, section 1, states in relevant part:

If a person by deception induces someone to commit or omit to commit some act which involves gain for the accused and loss for the deceived or someone represented by the latter[,] imprisonment for at most two years shall be imposed for *fraud*.

A sentenced [sic] for fraud shall also be imposed on a person who, by delivering incorrect or incomplete information, or by making alterations to a programme or recording or by other means, unlawfully affects the result of automatic data processing or any other similar automatic process so that gain accrues to the offender and loss is entailed by any another person.

Chapter 14, section 1 of Sweden's penal code, states:

Matter of L-B-R-

A person who, by writing the name of another person, real or fictitious, or by deceit obtains another's signature or in other ways produces a false document or deceitfully alters or adds to a genuine document, shall, if the act jeopardises proof, be sentenced for *falsification of a document* to imprisonment for at most two years.

A document is to be considered as including a protocol, contract, promissory note, certificate or other record established as evidence or otherwise important as evidence and also an identification card, ticket or similar evidential token.

The record establishes that on [REDACTED] 2004 in the [REDACTED] District Court, the Applicant was convicted for shoplifting, in violation of chapter 8, section 2 of Sweden's Penal Code. He was fined 30 times 30 Swedish kronor (SEK 30) and ordered to pay SEK 500. On [REDACTED] 2006, he was again convicted for shoplifting in the [REDACTED] District Court, in violation of chapter 8, section 2 of Sweden's Penal Code. He was fined 30 times SEK 30 and ordered to pay SEK 500.

Chapter 8 of Sweden's Penal Code provides, in pertinent part:

Section 1

A person who unlawfully takes what belongs to another with intent to acquire it, shall, if the appropriation involves loss, be sentenced for theft to imprisonment for at most two years.

Section 2

If the crime under Section 1, having regard to the value of the stolen goods and other circumstances of the crime, is regarded as petty, a fine or imprisonment for at most six months shall be imposed for *petty theft*.

As the Applicant does not contest his inadmissibility for the four convictions above and the record does not show the determination that these are crimes involving moral turpitude to be in error, we will not disturb the finding of inadmissibility under section 212(a)(2)(A) of the Act.

The record indicates that on [REDACTED] 2000, in the [REDACTED] District Court, the Applicant was convicted for unlawful threat under chapter 4, section 5, paragraph 2 of Sweden's penal code. The Applicant was sentenced to two years imprisonment, ordered to pay a fee of SEK 500 and damages totaling SEK 53,585. Later the Court of Appeal modified his sentence to one year and six months. Because the record shows that the Applicant was

Matter of L-B-R-

convicted of crimes involving moral turpitude as discussed previously, we will not analyze whether his conviction for unlawful threat was for a crime involving moral turpitude.

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

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

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that --

(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,

(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; 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 . . .

On appeal, the Applicant asserts that he has been rehabilitated. Section 212(h)(1)(A) provides for a waiver if the record establishes that the activities for which the Applicant is inadmissible occurred more than 15 years before the date of the visa application. The Applicant's convictions for crimes involving moral turpitude were on the following dates: [REDACTED] 2004; [REDACTED], 2004; and [REDACTED] 2006. The underlying activities occurred before each conviction, but not 15 years before the date of the visa application. The Director determined and we concur that the record shows that the Applicant is ineligible for a waiver under section 212(h)(1)(A) because 15 years have not lapsed since the activities for which he is inadmissible occurred.

Section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The Applicant's U.S. citizen fiancée is the qualifying relative in this case. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The record reflects that the Applicant is also inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresenting material facts while seeking to procure a visa and procuring a visa to the United States. The Applicant failed to indicate that he had been arrested on his 2011 nonimmigrant visitor's visa application, which was approved, and his 2013 fiancé visa application.

The Applicant states that he is not inadmissible under section 212(a)(6)(C)(i) of the Act, as he acted in good faith. He states that he was advised by attorneys that his shoplifting incidents would not stand visible in his record and he forgot about his forgery conviction.

Section 212(a)(6)(C) states:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now Secretary of the Department of Homeland Security (Secretary)] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

In order to be found inadmissible for fraud or willful misrepresentation, an individual must seek to procure, have sought to procure or have procured a visa, other documentation, admission, or other benefit under the Act. A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys*, 485 U.S. at 771-72. The Board of Immigration Appeals (Board) has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either:

1. the alien is excludable on the true facts, or

Matter of L-B-R-

2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

The Applicant's misrepresentations of his criminal history on his visa applications were material as he would have been inadmissible based on the true facts and his responses shut off a line of inquiry relevant to the benefits he sought.

For a misrepresentation to be willful, it must be determined that the applicant was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *See generally Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956). To be willful, a misrepresentation must be made with knowledge of its falsity. 7 I&N Dec. at 164. To determine whether a misrepresentation was willful, we examine the circumstances as they existed at the time of the misrepresentation, and we "closely scrutinize the factual basis" of a finding of inadmissibility for fraud or misrepresentation because such a finding "perpetually bars an alien from admission." *Matter of Y-G-*, 20 I&N Dec. 794, 796-97 (BIA 1994); *see also Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998) and *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28-29 (BIA 1979).

Moreover, an individual cannot deny responsibility for any misrepresentations made on the advice of another, unless it is established that the Applicant lacked the capacity to exercise judgment. *See Memo*, from Lori Scialabba, Act. Assoc. Dir., Dom. Ops., Donald Neufeld, Assoc. Dir., Refugee, Asylum and Int. Ops., Pearl Chang, Act. Chief, Off. of Pol. and Stra., U.S. Citizenship and Immigration Serv., to Field Leadership, *Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators* 13 (March 3, 2009) (stating that an applicant is responsible for action taken by a representative if the applicant is aware of that action and does not lack the capacity to exercise judgment).

The Applicant states that he did not intentionally misrepresent his criminal history but relied on the advice of lawyers who told him that he did not have to disclose his fraud and shoplifting convictions due to their minor nature. The record does not establish that the Applicant lacked the capacity to exercise judgment so he cannot deny responsibility for his misrepresentations made on the advice of others.

The Applicant's statement that he did not willfully misrepresent his criminal history is not persuasive. In light of the record, we find that the Applicant willfully made material misrepresentations in seeking to procure a visa and procuring a visa, and as a result he is inadmissible under section 212(a)(6)(C)(i) of the Act.

The Director determined that the Applicant established extreme hardship to a qualifying relative. We will not disturb that finding. In that the Applicant has established that the bars to his admission would result in extreme hardship to a qualifying relative, we will now address whether the Applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the Applicant 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).

In evaluating whether . . . 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, 21 I&N Dec. 296, 301 (BIA 1996). We must then, "[B]alance 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. (Citations omitted).

The adverse factors in the present case are the Applicant's material misrepresentations in seeking to procure a K-1 fiancé visa in 2013 and a B-2 visitor's visa in 2011; procuring the aforementioned B-2 visa and using it to enter the United States multiple times; and his convictions for unlawful threat, shoplifting (twice), fraud, and falsification of a document. These convictions occurred between 2000 and 2006. In addition, the record is not clear as to the underlying facts of his unlawful threat conviction. However, the record reflects that he was ordered to pay significant amounts in damages to five different individuals. As such, the Applicant has committed several crimes and misrepresented himself multiple times over a lengthy period of time, from 2000 until 2013. The Applicant's assertions that he was wrongfully convicted for fraud and that he has never lied to the American Embassy suggest that he has not taken responsibility for his criminal history or his misrepresentations to the consular officer.

Matter of L-B-R-

The positive factors include extreme hardship to the Applicant's spouse. Extreme hardship is but one favorable factor in a determination of whether the Secretary should exercise discretion. *See Matter of Mendez, supra.* The favorable factors in the present matter do not outweigh the negative so we will not favorably exercise the Secretary's discretion.

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 appeal is dismissed.

Cite as *Matter of L-B-R-*, ID# 13395 (AAO Dec. 11, 2015)