



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUL 27 2015**

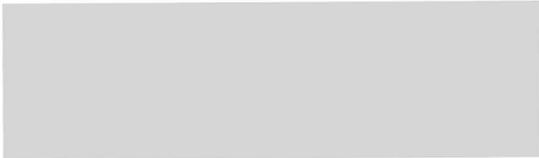
FILE:

APPLICATION RECEIPT:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of China who was found to be inadmissible to the United States pursuant to 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 and under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or misrepresentation. The applicant was further found inadmissible under section 212(a)(2)(C)(i) of the Act, 8 U.S.C. § 1182(a)(2)(C)(i), for having been an assister in the illicit trafficking in a controlled substance. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen mother.

The director determined that as the applicant is inadmissible under section 212(a)(2)(C)(i) of the Act, for which there is no waiver, the Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied as a matter of discretion. *Decision of the Director*, dated October 10, 2014.

On appeal the applicant asserts that he is not inadmissible under section 212(a)(2)(C)(i) of the Act, because he was charged with possession, not with intent to distribute or under any trafficking statute, and that the possession charges against him were dismissed. The applicant further asserts that he has met his burden of establishing extreme hardship to his mother if he is unable to reside in the United States. With the appeal the applicant submits a statement. The record contains an affidavit from the applicant, a letter of support from his sister, documentation regarding the applicant's criminal convictions and documentation relating to the applicant's proceedings in Immigration Court. 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 –
 - (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 pertinent 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 –

....

- (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..

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 on [REDACTED], 2003, the applicant was convicted in the 10th Judicial Circuit, [REDACTED], State of Michigan, of Felonious Assault in violation of Michigan Penal Code Chapter 750.82. The applicant was sentenced to 365 days in jail. At the same time the applicant was also convicted of Fleeing – 3rd Degree, in violation of Michigan Penal Code 750.479A3, for which he was sentenced to 365 days in jail and ordered to pay restitution.

At the time of the applicant's conviction, the statute stated:

750.82. Felonious assault, penalty; violation in a weapon free school zone, penalty; definitions

Sec. 82. (1) Except as provided in subsection (2), a person who assaults another person with a gun, revolver, pistol, knife, iron bar, club, brass knuckles, or other dangerous weapon without intending to commit murder or to inflict great bodily harm less than murder is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

(2) A person who violates subsection (1) in a weapon free school zone is guilty of a felony punishable by 1 or more of the following:

(a) Imprisonment for not more than 4 years.

(b) Community service for not more than 150 hours.

(c) A fine of not more than \$6,000.00.

(3) As used in this section:

(a) "School" means a public, private, denominational, or parochial school offering developmental kindergarten, kindergarten, or any grade from 1 through 12.

(b) "School property" means a building, playing field, or property used for school purposes to impart instruction to children or used for functions and events sponsored by a school, except a building used primarily for adult education or college extension courses.

(c) "Weapon free school zone" means school property and a vehicle used by a school to transport students to or from school property.

The BIA has indicated that assault with a deadly weapon is generally deemed to be a crime involving moral turpitude. *Matter of Medina*, 15 I. & N. Dec. 611 (BIA 1976). U.S. Circuit Courts of Appeal have also determined assault with a deadly weapon to be a crime involving moral turpitude. The Eleventh Circuit Court of Appeals found that any intentional battery involving the use of a deadly weapon constitutes a crime of moral turpitude and noted that conclusion is supported by the decisions of other circuits, citing various cases concluding that assault with a dangerous or deadly weapon is a crime involving moral turpitude. *Sosa-Martinez v. US Attorney General*, 420 F.3d at 1342 (11th Cir. 2005).

As the applicant's conviction for Felonious Assault under Michigan Penal Code 750.82 includes use of a dangerous weapon, we concur with the director's finding that the applicant is inadmissible for having been convicted of a crime involving moral turpitude. On appeal the applicant has not contested this finding.

The director also found the applicant inadmissible under section 212(a)(6)(C) for misrepresentation. The record reflects that on September 10, 1992 the applicant attempted to enter the United States by presenting a photo-substituted Korean passport.¹

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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:

¹The record reflects that on March 31, 1993, the applicant was ordered excluded from the United States by an immigration judge and on October 16, 2003, was ordered removed by an immigration judge. On November 5, 2003, the applicant was removed from the United States to China. The applicant had also filed an Application for Asylum (Form I-589) in 1993, which the applicant requested to be withdrawn in 2001 when his mother filed Form I-130 on his behalf.

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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

The director further found the applicant inadmissible for controlled substance trafficking.

Section 212(a)(2) of the Act provides, in pertinent part, that:

(C) Controlled Substance Traffickers - Any alien who the consular officer or the Attorney General knows or has reason to believe--

(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so . . . is inadmissible.

The record reflects that on [REDACTED] 2002, the applicant was involved in a high speed chase with police in [REDACTED] Michigan. The police incident report provides details that at conclusion of the pursuit police uncovered from the applicant's car multiple bags of pills and more than \$1,200 cash. On [REDACTED] 2002, police obtained a search warrant of the applicant's [REDACTED] Michigan, residence, where additional bags of pills were found which were sent to a laboratory for identification of the substance.

As a result of the incident and search of his home the applicant was charged with six criminal offenses, including Controlled Substance – Possession/Analogues in violation of Michigan Compiled Laws chapter 333 Public Health Code, Section 7403(2)(b). Charges against the applicant indicate that the controlled substance was identified as Diazepam, a Schedule IV controlled substance, according to the U.S. Department of Justice, Drug Enforcement Administration. Controlled substance charges against the applicant were dismissed when he pled nolo contendere to felonious assault and third degree fleeing charges.

The director's decision noted that, although the charge was ultimately dropped as part of a plea bargain, it appears evident from police record that the applicant was a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking of control substances.

On appeal, the applicant asserts that he is not inadmissible under section 212(a)(2)(C)(i) of the Act, as he was not charged with intent to distribute or any other trafficking statute, and that the possession charge was dismissed, which could have been for many reasons other than a plea bargain. The

applicant further asserts that had police believed him to be an illicit trafficker they would have charged him such an offense.

Upon review, we find the record supports that the applicant is inadmissible under section 212(a)(2)(C)(i) of the Act, as there is “reason to believe” that the applicant has been an illicit trafficker in a controlled substance. Section 212(a)(2)(C)(i) of the Act. As noted above, a police report following the encounter with the applicant details the multiple bags of pills found in the applicant’s car and describes when law enforcement officers executed a search warrant on the applicant’s residence and additional bags of pills were found. Based on this information the applicant was charged with a controlled substance violation as laboratory testing identified pills containing Diazepam, a Schedule IV controlled substance. The large quantity of pills in his possession, which were found in his possession after he attempted to elude police and caused a high-speed chase, support the director’s finding that he possessed the pills with the intent to distribute them. In order for an applicant to be inadmissible under section 212(a)(2)(C) of the Act, the only requirement is that an immigration officer “knows or has reason to believe” that the applicant is or has been an illicit trafficker in a controlled substance or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled, or endeavored to do so. Section 212(a)(2)(C) of the Act; *Alarcon-Serrano v. I.N.S.*, 220 F.3d 1116, 1119 (9th Cir. 2000). In order for an immigration officer to have sufficient “reason to believe” that an applicant has engaged in conduct that renders him inadmissible under section 212(a)(2)(C) of the Act, the conclusion must be supported by “reasonable, substantial, and probative evidence.” *Id.* (citing *Hamid v. INS*, 538 F.2d 1389, 1390-91 (9th Cir.1976)).

Based on the foregoing, there is sufficient reason to believe that the applicant has been an illicit trafficker in a controlled substance, and he is inadmissible under section 212(a)(2)(C)(i) of the Act. There is no provision under the Act that allows for waiver of inadmissibility under section 212(a)(2)(C)(i) of the Act. For this reason, the appeal must be dismissed.

The applicant is also inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude, and section 212(a)(6)(C)(i) for attempting to procure admission to the United States through fraud or misrepresentation and he requires a waiver of inadmissibility. However, as the applicant is not eligible for a waiver of his inadmissibility under section 212(a)(2)(C)(i) of the Act, no purpose would be served in adjudicating an application for a waiver of his inadmissibility under sections 212(h) or 212(i) 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 appeal is dismissed.