



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUL 30 2015

FILE #: [REDACTED]

APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(h) and of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(h)

ON BEHALF OF APPLICANT:

NO REPRESENTATIVE OF RECORD

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

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native of Iraq and citizen of Jordan who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more. The record also reflects that the U.S. Consulate in [REDACTED] the United Arab Emirates, did not issue the applicant an immigrant visa upon determining he was inadmissible 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 Director concluded that, although the applicant established he meets “the basic requirement for rehabilitation” and extreme hardship to a qualifying relative, he has not established that his waiver should be granted as a matter of discretion. The Director denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Decision of the Director*, dated May 30, 2014.

On appeal, the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) erroneously concluded he does not warrant a favorable exercise of discretion, because it did not consider all equitable factors in the record, demonstrating his good moral character and rehabilitation. *See Form I-290B, Notice of Appeal or Motion*, dated June 25, 2014.

The record includes, but is not limited to: motions and correspondence; statements by the applicant and his spouse; the applicant’s conviction records; documents concerning identity and relationships; employment, financial, medical, and mental health documents; a journal article; and documents about conditions in the United Arab Emirates. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides, in relevant part:

(B) Aliens unlawfully present.-

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who—

...

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

...

(v) Waiver.- The Attorney General [now Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

The record reflects that the applicant last entered the United States on or about October 19, 1988 as a nonimmigrant visitor with authorization to remain for two months. The record also reflects that he did not timely depart from the United States, and he was placed in removal proceedings before the immigration court. The immigration judge ordered the applicant removed to Jordan on April 30, 2001. The applicant's appeal to the Board of Immigration Appeals (BIA) was dismissed on March 29, 2002. The record further reflects that the applicant's subsequent motions to stay his removal were denied by the U.S. Circuit Courts of Appeal, whereupon he became subject to a final order of removal. The applicant was removed from the United States on October 18, 2006. The record reflects that he has remained outside the United States to date.

Based on the foregoing, the applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful-presence provisions in the Act, until November October 18, 2006, a period in excess of one year. Accordingly, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding of inadmissibility, and he requires a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act.

We will now determine the applicant's inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

Section 212(a)(2)(A) of the Act provides, in relevant 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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

The BIA stated in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992):

[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 shows that the applicant was convicted on [REDACTED] 1994, of the following crimes in the U.S. District Court of California, [REDACTED] for his conduct on [REDACTED] 1993:

1. One count of conspiracy to commit offense or to defraud the United States, pursuant to 18 U.S.C. § 371
2. Two counts of aiding and abetting wire fraud, pursuant to 18 U.S.C. §§ 2 and 1343.¹

The record also shows that, on [REDACTED] 1994, the applicant initially received a sentence to confinement for 37 months (concurrent) with credit for time served for each conviction, and supervised release for three years (concurrent) for each conviction. The applicant also was sentenced to make restitution in the amount of \$679,510.64, and to pay a \$25,000 fine as well as a penalty of \$150. The record further

¹ At the time of the applicant's convictions, 18 U.S.C. provided, in relevant part:

§ 2. Principals

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

§ 371. Conspiracy to commit offense or to defraud United States

If 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, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

§ 1343. Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined not more than \$1,000 or imprisoned not more than five years, or both. If the violation affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

shows that on [REDACTED] 1994, the court vacated the applicant's order to make restitution, and imposed an amended sentence on [REDACTED] 1995, with the same aforementioned terms exclusive of restitution.

Fraud has, as a general rule, been held to involve moral turpitude. The U.S. Supreme Court in *Jordan v. De George* concluded, "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 convictions for aiding and abetting wire fraud under 18 U.S.C. § 1343 include a crime involving moral turpitude. The applicant does not contest whether he has been convicted of a crime involving moral turpitude, or whether he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Moreover, the record shows that, throughout his immigration proceedings, the applicant has been found to have been convicted of an aggravated felony as defined in section 101(a)(43)(M) of the Act, 8 U.S.C. § 101(a)(43)(M) ("aggravated felony" includes an offense that involves fraud or deceit in which the loss to the victim(s) exceeds \$10,000). Based on the foregoing, the record reflects that the applicant needs a waiver under section 212(h) of the Act.

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

The [Secretary] may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if –

(1) (A) in the case of any immigrant it is established to the satisfaction of the [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 [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 [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.

As previously noted, the record reflects that the applicant's most recent convictions for conspiracy to commit offense or to defraud the United States and for aiding and abetting wire fraud occurred in [REDACTED] 1994, for his conduct on [REDACTED] 1993. Also, the record reflects that in response to a request for evidence, the applicant provided a letter issued by the General Intelligence in Jordan dated February 24, 2014, indicating the applicant "[i]s not wanted by the Public Security Department." He also provided a Police Clearance Certificate issued by the General Department of Criminal Investigations of Dubai, United Arab Emirates, dated February 9, 2014, indicating the applicant "has no previous convictions." Accordingly, the record sufficiently establishes that the applicant's culpable conduct took place more than 15 years ago, and he meets the requirement of section 212(h)(1)(A)(i) of the Act.

The record reflects that the applicant's convictions are a result of his effort, with others, to defraud suppliers of computer parts and other electronic equipment to fraudulently obtain money and property by establishing multiple "dummy" corporations, opening bank accounts, and securing lines of credit. The record also reflects that while the applicant was on release awaiting his sentence, his bond was revoked and he was taken into custody because there was probable cause that he violated the conditions of his release by engaging in criminal conduct concerning the proceeds of the original wire fraud scheme for which he was convicted. The record further reflects that a criminal charge was filed in Utah against the applicant on or about [REDACTED] 1991, alleging theft by deception; that the applicant subsequently fled from the jurisdiction; that he was subsequently apprehended on a fugitive warrant; and that the authorities in Utah chose not to prosecute him.

While the applicant's convictions in 1994, the revocation of his bond, and his attempt to evade a pending criminal charge in Utah in 1991 are serious, the record does not show that the applicant has engaged in fraudulent or conspiratorial behavior following his 1994 criminal activities; that he has attempted to evade other pending criminal charges; or that he has engaged in criminal activity in the 21 years since his conviction. Accordingly, the record does not demonstrate that admitting the applicant would be contrary to the national welfare, safety, or security of the United States, and the applicant has sufficiently shown that he meets the requirement of section 212(h)(1)(A)(ii) of the Act.

As previously discussed, the record does not include evidence that the applicant has engaged in criminal activity since his conviction in 1994. The record, therefore, does not reflect that the applicant has a propensity to engage in further criminal activity. The record shows that he completed the terms of his sentence, including the periods of incarceration and supervisory release as well as the payment of the \$25,000 fine. The record also shows that during his incarceration, he received letters of support from officials at the [REDACTED], including a licensed professional counselor, indicating that he provided volunteer work and assisted the [REDACTED] with updating its computer systems during his incarceration. The record further shows that the applicant acknowledges his responsibility for his criminal actions and expresses remorse to his victims and their family members. The record also shows that he has provided emotional and economic support

to his wife of 20 years, raising their U.S. citizen son and her biological sons, and he has expressed remorse to his family members because of his actions leading to his criminal convictions. Accordingly, the applicant has sufficiently 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 that the applicant has been convicted of multiple serious crimes, including crimes defined as an aggravated felony and a crime involving moral turpitude. In addition, the applicant remained in the United States for many years without lawful immigration status, and he engaged in many years of unauthorized employment.

The positive factors in this case include substantial close family ties to U.S. citizens, including his wife, who resided in the United States for about 35 years before she relocated to be with the applicant; his eldest stepson, diagnosed as mildly mentally retarded and who depended on the applicant's wife as his primary caregiver because of substantial handicaps in learning, communicating, and caring for himself; their son, another stepson, father, and brother. The positive factors also include extreme hardship to the applicant's U.S. citizen spouse; hardship to their children; and the support that the applicant provides, emotionally and financially, to his U.S. citizen wife. In addition, the applicant has no convictions since 1994, over 21 years ago; the applicant has maintained steady employment; the applicant has consistently paid federal income taxes; the applicant has lived outside of the United States for nearly ten years; and the applicant has pursued certifications in project management to further his career.

While the applicant's criminal activities and violations of U.S. immigration law are serious, 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.