



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

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

MATTER OF L-J-G-

DATE: OCT. 13, 2015

APPEAL OF NEWARK FIELD OFFICE DECISION

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

The Applicant, a native and citizen of the Dominican Republic, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(h), 8 U.S.C. § 1182(h). The Field Office Director, Newark Field Office, denied the application. The matter is now before us on appeal. The appeal will be sustained.

The Applicant was found 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 Form I-130, Petition for Alien Relative and seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen children.

The Director determined that the Applicant had not established that she had been rehabilitated or that a qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The waiver application was denied accordingly. *Decision of the Field Office Director*, dated December 4, 2014.

On appeal the Applicant asserts that the USCIS abused its discretion, that she has been rehabilitated, and that as the crime for which she was convicted occurred 25 years ago she need only to show rehabilitation and is not required to show extreme hardship to a qualifying relative. With the appeal the Applicant submits a brief, a statement from a hospital where her first child was born indicating that she has no balance due, and a print-out pertaining to federal income tax filing requirements. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

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] 1990, the Applicant pled nolo contendere in the Eleventh Judicial Circuit, In and For [REDACTED] Florida, of Unauthorized Use or Possession of Drivers Licenses, in violation of Florida statute 322.212, a third degree felony, and was sentenced to 19 days imprisonment and fined \$225. We note that a plea of nolo contendere is a conviction under Section 101(a)(48) of the Act. As the Applicant has not disputed that her conviction is for a crime involving moral turpitude, and the record does not show the finding of inadmissibility to be erroneous, we will not disturb the finding of the Director.

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; 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

(b)(6)

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would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien.

In the present matter, the Applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. While the Applicant's conviction is serious, the record does not show that she has engaged in criminal activity following her conduct of [REDACTED] 1990, more than 25 years ago. The record also does not reflect that admitting the Applicant would be contrary to the national welfare, safety, or security of the United States.

On appeal the Applicant states that she deeply regrets the actions that lead to her conviction and that at the time she was young and used poor judgment, but that since then she has lived a positive and productive life raising children and serving the community. Although the Director found that she had not been rehabilitated because of a 1994 statement that she owed money to a hospital for expenses incurred in 1988 when she gave birth to her daughter, the Applicant states that these events took place more than 20 years ago and that the hospital bill has been paid.¹ In support of her contention the Applicant submits a December 2014 letter from the hospital stating that the Applicant has no pending balance. The Applicant also states that the Director's decision infers that she has not paid taxes on income, but she asserts that her earnings were below that for which an individual is required to file.

The Applicant states that she aims to have a positive impact on the community by working as an agent with [REDACTED] a wind power company, and [REDACTED] Services, a company advocating good personal financial practices. The Applicant states that she draws a small commission from each. The record contains a document from [REDACTED] recognizing the Applicant, a document from [REDACTED] indicating the Applicant is an agent, and copies of debit cards issued by each organization to the Applicant.

The Applicant states that she operates a dance troupe for youth, for whom she acts as a mentor, and this provides them with activities keeps them out of trouble. The Applicant submitted certificates of appreciation for her activities and for the performances of her dance troupe as well as letters of support from the parents of children performing in the troupe.

The Applicant further asserts that her children would suffer extreme hardship if her waiver application is not granted as three of them are young and rely on her emotional and financial support, and that relocating to the Dominican Republic would be like starting a new life while they are still in school. The record shows that the Applicant has four U.S. citizen children, one working and three in school, and that each submitted a statement of support for the Applicant. The Applicant submitted

¹ The record contains a Form I-275, Notice of Visa Cancellation, dated April 17, 1994, indicating that the Applicant stated to a U.S. immigration inspector that she had given birth in a U.S. hospital, never paid the bill, and had never attempted to determine the amount owed. She also stated that a cousin's husband had paid \$700. The record further shows that the Applicant was allowed to withdraw her application for admission to the United States at that time.

evidence of awards and certificates achieved by her children and copies of school records, including documentation indicating that her son has learning disabilities.

The Applicant has shown by a preponderance of the evidence that she has been rehabilitated. As noted above, there is no evidence that the Applicant has been convicted of a crime involving moral turpitude or engaged in any criminal activity since 1990, more than 25 years ago. The record shows that the applicant is active in the community, provides emotional support to her children, and is regarded by others as having a positive 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 she meets the requirement of section 212(h)(1)(A)(iii) of the Act. Based on the foregoing, the Applicant has shown that she 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 1990 of a crime involving moral turpitude, her immigration violation for remaining in the United States beyond the period authorized at her 1995 entry, and periods of unlawful presence while in the United States. The positive factors in this case include hardship to the Applicant's four U.S. citizen children that would result from her inadmissibility, the Applicant's significant family and community ties to the United States, support letters on behalf of the Applicant, her expressed remorse for her actions that led to her conviction, and the apparent lack of a criminal record in more than 25 years. Although the Applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted.

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

Cite as *Matter of L-J-G-*, ID# 13021 (AAO Oct. 13, 2015)