U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-M-A-

DATE: JAN. 27, 2016

APPEAL OF HIALEAH FIELD OFFICE DECISION

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

The Applicant, a native and citizen of India, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(h), 8 U.S.C. § 1182(h). The Field Office Director, Hialeah, Florida, denied the application. The matter is now before us on appeal. The appeal will be dismissed. The matter will be remanded to the Field Office Director, Hialeah, Florida, for further proceedings consistent with the foregoing opinion.

The Applicant was found to be inadmissible to the United States 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 admitting to committing a crime involving moral turpitude. The Applicant is the beneficiary of an approved Form I-140, Immigrant Petition for Alien Worker, and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States.

In a decision dated January 6, 2015, the Director noted that the Applicant had no qualifying relatives for purposes of a waiver under section 212(h) of the Act. The Director further found that the Applicant had not established that his admission would not be contrary to the national welfare, safety, or security of the United States or that he had been rehabilitated. The Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied as a matter of discretion. The decision to deny the Form I-601 was affirmed on motion by the Director on May 7, 2015.

On appeal, the Applicant contends that he did not admit to having committed a crime of moral turpitude and asserts that that he has not been convicted, charged, nor admitted allegations. In support the Applicant submits a statement and copies of previously-submitted documents. The entire record was reviewed and considered in rendering this decision.

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

> Criminal and related grounds. —
>
> (A) Conviction of certain crimes. –
>
> (i) In general. – Except as provided in clause (ii), any 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, or

(II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

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

> The Attorney General [now Secretary of Homeland Security (Secretary)] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> (1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that -
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> > (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.

The record reflects that the Applicant entered the United States as an H-1B nonimmigrant worker on May 20, 2003. The Applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, on July 18, 2003. Prior to his adjustment interview on May 14, 2014, the Applicant submitted a Form I-601, and presented a copy at his adjustment interview. On the Form I-601 the Applicant checked box 17 on page two indicating that he had "been involved in a crime of moral

turpitude." In a statement submitted with the waiver application the Applicant summarized a document, dated 1998, that alleged that he abused his official position by forging various transactions and that he misappropriated funds, and he summarized charges, dated , 2001, that he caused wrongful loss to the bank and gain to himself by fraudulent acts. In his statement the Applicant explained the actions he took as a bank branch manager from 1993 to 1996 that he contended were due to threats from an organized crime figure, that in 1996 he reported his actions to his employer, that a warrant was issued against him in 2003, and that he had lawyers preparing his case in India. The Applicant also indicated that he was submitting the waiver application for the following reason: "As the definition of moral turpitude is very subjective, this application is made for waiver of inadmissibility for crime involving moral turpitude, although in my opinion the case pending against me does not involve moral turpitude as my intent was never evil."

In denying the waiver application the Director stated that the Applicant had an outstanding warrant for his arrest in India for charges of misappropriation, cheating, forgery, and criminal conspiracy, but that the Applicant was unable to provide the record of conviction as the case was still pending against him. The Director further noted that at his adjustment interview the Applicant testified that he had not been arrested in India, but had been charged with the offense of misappropriation and that he was aware that there was a warrant for his arrest in India. The Director further detailed that when asked about the acts he committed the Applicant responded:

- That he had been threatened by a gang member to provide fraudulent loans;
- That he reported it to his bank, was moved to the head office, and then terminated;
- That an investigation was started in 1998;
- That he made payments to the bank for money lost;
- That charges were filed against him in 2001, but he was not aware of them until 2003; and
- That in 2003 he traveled to India to appear for a hearing.

The Director found that the Applicant's testimony constituted an admission to having committed acts constituting the essential elements of a crime involving moral turpitude.

On appeal, the Applicant maintains that he was never charged with the offense of misappropriation. He further contends that he applied for a Form I-601 for "having succumbed under pressure and extending loans without following all the procedures. However, I had not violated any Indian Law or Ordinances." The Applicant further states that "the definition of moral turpitude is very subjective… This [the filing of the I-601] was a pro active step taken by me so that the reason why I did not follow all the procedure for granting the loans were under life threatening circumstances and not for any evil intention on my part."

While we agree that inadmissibility under section 212(a)(2)(A)(i)(I) of the Act may be based on an admission to having engaged in acts that constitute the essential elements of a crime involving moral turpitude, we do not find the record to contain sufficient evidence to establish that the Applicant in the present case has made such an admission.

In order for the admission of a crime or acts constituting the essential elements of a crime to be properly used as a basis for inadmissibility, three conditions must be met: 1) the admitted acts must constitute the essential elements of a crime in the jurisdiction in which they occurred; 2) the respondent must have been provided with the definition and essential elements of the crime, in understandable terms, prior to making the admission; and 3) the admission must have been voluntary. *Matter of K-*, 7 I&N Dec. 594, 597 (BIA 1957); *see also Matter of G-M-*, 7 I&N Dec. 40, 70 (BIA 1955).

Upon review, the record does not reflect that the Applicant was provided with the essential elements of the criminal law which he allegedly admitted to violating, or that he actually admitted to commission of a crime. The Applicant acknowledges the acts that lead to a warrant being issued against him, but for the reasons stated above these statements do not constitute admitting to committing the essential elements of a crime involving moral turpitude. We find no sworn statement or other formal written record from the interview that establishes what was explained to him at his adjustment interview, what specific action he committed and under what Indian Penal Code statute it would constitute a crime, or what the Applicant understood regarding admitting his actions and the possible effect on his admissibility. The record does not establish that he admitted to all the factual elements of a crime, or that he made an admission that was explicit, unequivocal, and unqualified. Accordingly, the Applicant's statements regarding the events that gave rise to a finding of inadmissibility are not sufficient to establish that he has admitted to the essential elements of a crime involving moral turpitude.

We recognize the burden on an interviewing officer due to the requirement to cite the elements of specific criminal law in an adjustment interview. However, finding an individual inadmissible based on criminal conduct in the absence of a conviction in a court of law is a very serious matter. Where an applicant has not been afforded a criminal trial with respect to his conduct, or where he may not have the opportunity to be represented by counsel experienced in criminal matters, the decision of the BIA in *Matter of K-* sets a minimum requirement that such applicant is informed of the elements of the criminal law or laws which he has allegedly transgressed prior to taking an admission and using that admission as a basis for inadmissibility. *Matter of K-*, 7 I&N Dec. 594, 596-98 (BIA 1957).

Based on the foregoing, we find that the Applicant's submission of a waiver application and his statements at his adjustment interview regarding his activities in India do not constitute the admission of committing acts which constitute the essential elements of a crime involving moral turpitude, as contemplated by section 212(a)(2)(A)(i)(I) of the Act, due to the fact that the criteria for admissions provided by the BIA in *Matter of K-* were not met. In the present case, the record does not establish that the Applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act.

ORDER: The appeal is dismissed. The matter is remanded to the Field Office Director Hialeah, Florida, for further proceedings consistent with the foregoing opinion.

Cite as *Matter of S-M-A-*, ID# 15251 (AAO Jan. 27, 2016)