



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

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

MATTER OF H-P-G-

DATE: MAY 13, 2016

APPEAL OF LOS ANGELES FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Mexico, seeks a waiver of the ground of inadmissibility for a crime involving moral turpitude. *See* Immigration and Nationality Act (the Act) section 212(h), 8 U.S.C. § 1182(h). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to lawful permanent residence must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives; or, because the activities for which the foreign national is inadmissible occurred 15 years prior, if the foreign national's admission would not be contrary to the national welfare, safety, or security of the United States and the foreign national has been rehabilitated.

The Field Office Director, Los Angeles, California, denied the application. The Director concluded that the Applicant was inadmissible to the United States for a crime involving moral turpitude. The Director further stated that the Applicant's crime was a violent or dangerous crime and that the Applicant did not establish exceptional and extremely unusual hardship to a qualifying relative. The Director also stated that a favorable exercise of discretion was not merited. The Director further found that under the Act the Applicant's crime is an aggravated felony.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that the Director erred by finding that the hardship to his spouse and daughter would not be exceptional and extremely unusual. He further claims that the Director erred by giving improper weight to the discretionary factors and by failing to address whether he qualifies for a waiver based on rehabilitation.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking to adjust status to lawful permanent resident and has been found inadmissible for a crime involving moral turpitude, specifically the crime of lewd or lascivious acts with a child under age 14.

(b)(6)

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Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), provides that any foreign national convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime is inadmissible.

Individuals found inadmissible under section 212(a)(2)(A) of the Act may seek a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h). Section 212(h) of the Act provides for a discretionary waiver where the activities occurred more than 15 years before the date of the application if admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and the foreign national has been rehabilitated; or if denial of admission would result in extreme hardship to a United States citizen or lawful permanent resident spouse, parent, son, or daughter.

Section 212(h)(2) provides that no waiver shall be granted to a foreign national who has previously been admitted to the United States as lawfully admitted for permanent residence if either since the date of such admission the foreign national has been convicted of an aggravated felony or the foreign national has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation or proceedings to remove the foreign national from the United States.

II. ANALYSIS

The issue presented on appeal is whether the Applicant is eligible for a section 212(h) waiver of inadmissibility. The Director stated that the Applicant committed a crime involving moral turpitude and that under the Act his crime is a violent or dangerous crime.¹ The Director further stated that under section 101(a)(43)(A) of the Act the Applicant's crime of lewd or lascivious acts with a child under age 14 is an aggravated felony. The Applicant does not contest the Director's finding that his crime involves moral turpitude and is a violent or dangerous crime. Nor does he contest that under the Act his crime is an aggravated felony. Since the Applicant committed an aggravated felony, he is statutorily ineligible under section 212(h) of the Act for a waiver of inadmissibility. Because the Applicant has not demonstrated eligibility for a waiver, we need not consider whether he warrants a favorable exercise of discretion.

A. Aggravated Felony

Section 101(a)(43)(A) of the Act states that "murder, rape, or sexual abuse of a minor" meet the definition of an aggravated felony. The Applicant's conviction is for sexual abuse of a minor and is therefore an aggravated felony. *See Bernal-Bermudez v. Lynch*, 624 Fed. Appx. 592 (9th Cir.

¹ The record reflects that on [REDACTED] 1979, the court convicted the Applicant under California Penal Code § 288 of lewd or lascivious acts with a child under age 14. The court sentenced the Applicant to 365 days in jail and 1 year of probation. The court also committed the Applicant to a state hospital and required that he register as a sex offender and go to counseling.

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2015)(unpublished); *U.S. v. Farmer*, 627 F.3d 416, 419 (9th Cir. 2010); *U.S. v. Baron-Medina*, 187 F.3d 1144, 1146-47 (9th Cir. 1999).

B. Waiver

An individual found inadmissible under section 212(a)(2)(A) of the Act for a crime involving moral turpitude may seek a waiver of inadmissibility under section 212(h) of the Act. However, section 212(h) has an aggravated felony bar. The Board of Immigration Appeals (the Board) held that section 212(h) of the Act precludes foreign nationals who entered the United States as lawful permanent residents from establishing eligibility for a waiver on the basis of an aggravated felony conviction. *Matter of J-H-J-*, 26 I&N Dec. 563, 564-65 (BIA 2015). The record in this case establishes that on April 6, 1972, the Applicant entered the United States as a lawful permanent resident. It further shows that in 1979 the Applicant was convicted of lewd or lascivious acts with a child under age 14, which is an aggravated felony under the Act. He is thus statutorily ineligible under section 212(h) of the Act for a waiver of inadmissibility.

B. Discretion

Since the Applicant has not demonstrated eligibility for a waiver, we need not consider whether he warrants a favorable exercise of discretion.

III. CONCLUSION

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of H-P-G-*, ID# 16491 (AAO May 13, 2016)