



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

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

MATTER OF J-J-L-F-

DATE: OCT. 3, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Applicant, a native and citizen of Haiti, seeks a waiver of the ground of inadmissibility for a crime involving moral turpitude. *See* Immigration and Nationality Act (the Act) § 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 because the activities for which the foreign national is inadmissible occurred more than 15 years ago, 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 Director, Nebraska Service Center, denied the application, concluding that the Applicant was inadmissible for crimes involving moral turpitude and that his waiver application was not approvable because he was convicted of an aggravated felony.

The matter is now before us on appeal. The Applicant asserts that his aggravated assault conviction does not render him ineligible for a waiver because it is not an aggravated felony and because he adjusted status in the United States. He submits new evidence on appeal.

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

I. LAW

The Applicant is seeking admission as an immigrant and has been found inadmissible for crimes involving moral turpitude, specifically, for aggravated assault with a firearm, counterfeiting, and burglary. 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. 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

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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 (Section 212(h)(1)(A)).

Section 212(h)(2) of the Act 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.

An aggravated felony is defined as “a crime of violence (as defined in section 16 of Title 18 ...) for which the term of imprisonment [is] at least one year.” 8 U.S.C. § 1101(a)(43)(F). According to section 16(a), a crime of violence is “an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another.” 18 U.S.C. § 16(a). Section 16(b) adds “any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.” 18 U.S.C. § 16(b).

II. ANALYSIS

The Applicant does not contest his inadmissibility for crimes involving moral turpitude, a determination supported by the record. The issues on appeal are whether his 1993 aggravated assault with a firearm conviction qualifies as an aggravated felony and whether it renders him ineligible for a waiver under section 212(h) of the Act. The Applicant argues that it is not an aggravated felony because he was not sentenced to jail time for the crime and would not render him ineligible for a waiver pursuant to section 212(h)(2) of the Act because he entered the United States without inspection and adjusted post-entry to permanent resident status rather than being admitted as a permanent resident.

The record establishes that on November 3, 1990, the Applicant was admitted to the United States from Haiti as a lawful permanent resident. In [redacted] 1993, he had pleaded nolo contendere to Florida Statutes §§ 784.021(1)(a) and 775.08 of third-degree aggravated assault with a firearm.¹ The court withheld adjudication of guilt, suspended imposing the sentence, and placed the Applicant on probation for 3 years. In [redacted] 1993, the court revoked his probation and sentenced him to a three-year imprisonment term. In [redacted] 2001, he was placed in removal proceedings for his 1993 aggravated assault conviction. Ten months later, he was removed from the United States for being

¹ Fla. Stat. Ann. § 784.021(1)(a) states that an “aggravated assault” is an assault with a deadly weapon without intent to kill. Fla. Stat. Ann. § 784.011 defines an “assault” as “an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.”

(b)(6)

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convicted of an aggravated felony (the 1993 aggravated assault conviction) since becoming a permanent resident.

The section 212(h) waiver is not available to a lawful permanent resident convicted of an aggravated felony since becoming a permanent resident. *Matter of Yeung*, 21 I&N Dec. 610 (BIA 1996). An adjustment to permanent resident status post-entry is not an admission into the United States. *Matter of J-H-J-*, 26 I&N Dec. 563 (BIA 2015).

The record clearly demonstrates that the Applicant was admitted to the United States as a permanent resident and that he had not adjusted post-entry to permanent resident status. The waiver is therefore not available if his 1993 aggravated assault conviction qualifies as an aggravated felony.

The Applicant asserts that his conviction does not qualify as an aggravated felony for the reason that he was placed on probation and had not been sentenced to jail time. But the record shows that in 1993 the court revoked his probation and sentenced him to a three-year imprisonment term. As such, the Applicant was sentenced to a term of imprisonment of at least 1 year and under section 212(h)(2) of the Act is ineligible for a waiver.

As the Applicant is ineligible for a waiver we need not consider whether he warrants a waiver in the 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. He is inadmissible to the United States for crimes involving moral turpitude and is ineligible for a waiver since his aggravated assault with a firearm conviction is an aggravated felony.

ORDER: The appeal is dismissed.

Cite as *Matter of J-J-L-F-*, ID# 121742 (AAO Oct. 3, 2016)