



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

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

MATTER OF O-A-M-V-

DATE: SEPT. 23, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Applicant, a native and citizen of Mexico, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) §§ 212(a)(9)(B)(v) and 212(h), 8 U.S.C. §§ 1182(a)(9)(B)(v) and 212(h). The Service Center Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found to be inadmissible to the United States 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 Applicant was also 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 more than one year and seeking readmission within 10 years of his last departure from the United States. In addition, the Applicant was found inadmissible under section 212(a)(3)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(3)(ii), for seeking to enter the United States to engage in unlawful activity.

The Director concluded that since a waiver is not available for the Applicant's inadmissibility under section 212(a)(3)(A)(ii), the Applicant would remain inadmissible even if a waiver were granted for the Applicant's other inadmissibility grounds. Accordingly, he denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the Applicant asserts that he has not been convicted of a crime involving moral turpitude and that he has not belonged to any criminal organization or gang.

The record includes, but is not limited to: briefs, sworn testimony by the Applicant and his spouse, the Applicant's criminal records, documents concerning identity and relationships, school records of the Applicant and his spouse, a psychological evaluation, transcripts of immigration court proceedings, photographs of the Applicant's tattoo and family, letters regarding good moral character, and reports about conditions in Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

The finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act was based on the Applicant's two criminal convictions in 2009 for assault under Texas Penal Code section 22.01. At

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least one of these convictions involved assault upon a domestic partner. In addition, the Applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act is based on his entry into the United States without inspection at the age of [redacted] in or about 1992 and his subsequent accrual of unlawful presence from 2007, when he turned [redacted], until February 2012, when he was removed from the United States. Because the Applicant is inadmissible under section 212(a)(3)(A)(ii) for unlawful activities and there is no waiver for this inadmissibility, no purpose would be served in discussing these bases of inadmissibility or extreme hardship to a qualifying relative to receive a waiver of inadmissibility.

We will now determine the Applicant's inadmissibility under section 212(a)(3)(A)(ii) of the Act.

Section 212(a)(3) of the Act provides, in relevant part:

(A) In general.-

Any alien who a consular officer or the Attorney General [now Secretary of the Department of Homeland Security] knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in—

...

(ii) any other unlawful activity

...

is inadmissible.

In removal proceedings on [redacted] 2011, an immigration judge noted that he was aware that the Applicant had a tattoo that is a common gang tattoo in the [redacted] area, although the Applicant denied that he had any knowledge that this tattoo related to a gang.

The record reflects that during the Applicant's immigrant-visa interview with the U.S. Consulate in [redacted] Mexico on September 24, 2013, the consular officer noted that the Applicant had a tattoo of the [redacted] with the [redacted] and [redacted]. The Applicant claimed that he got the tattoo to cover up his girlfriend's name. The Applicant also has a [redacted] tattoo on his hand. At his interview he stated that he committed a revenge assault on a gang member in [redacted]. The U.S. Consulate referred the matter for a gang interview to determine whether the Applicant was involved with a gang. On November 13, 2013, the U.S. Consulate concluded that the Applicant was inadmissible under section 212(a)(3)(A)(2) and denied the Applicant an immigrant visa. The Applicant contests this finding of inadmissibility.

On appeal, he submits letters of support indicating that he has never been a gang member. The record contains ample evidence to find a reasonable ground to believe that the Applicant seeks to enter the United States to engage in unlawful activity. The Consulate obtained an advisory opinion concurring that the Applicant was inadmissible under section 212(a)(3)(A)(2).

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The Act makes clear that a foreign national must establish admissibility “clearly and beyond doubt.” Section 235(b)(2)(A) of the Act; *see also* 240(c)(2)(A) of the Act. Based on the record and the determination that the Applicant has been affiliated with a [REDACTED] based gang and would continue his affiliation if he returned to the United States, the record reflects that the Applicant is inadmissible under section 212(a)(3)(A)(ii) of the Act.

The Act does not include a provision for a waiver of inadmissibility under section 212(a)(3)(A)(ii), and thereby, the Applicant is currently statutorily ineligible to apply for a waiver of grounds of inadmissibility. As such, no purpose would be served in determining his eligibility for a waiver under section 212(a)(9)(B)(v) of the Act or whether he warrants a favorable exercise of discretion.

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 not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of O-A-M-V-*, ID# 10546 (AAO Sept. 23, 2015)