U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20589873

Date: MAR. 1, 2022

Appeal of San Bernardino, California Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h), and section 212(i) of the Act, 8 U.S.C. § 1182(i).

The Director of the San Bernardino, California Field Office denied the application, concluding that the record did not establish, as required, that denial of admission would result in extreme hardship to the Applicant's qualifying relative. On appeal, we determined after considering all the evidence in the record that the claimed hardships rise to the level of extreme hardship when considered both individually and cumulatively. We withdrew the Director's decision and remanded the matter to the Director to determine whether the Applicant warrants a favorable exercise of discretion.[1]

On remand, the Director reviewed the entire record and denied the application determining after weighing the favorable and unfavorable factors that the record did not support a favorable exercise of discretion. The Applicant appealed the Director's decision. We rejected the appeal as untimely. The Director treated the untimely appeal as a motion and dismissed the motion concluding that the Applicant did not warrant a favorable exercise of discretion. The matter is again before us on appeal. The Applicant contends that the Director erred in dismissing the motion and asserts that he merits a favorable exercise of discretion.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Upon *de novo* review, we will dismiss the appeal.

I. LAW

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.

[1] Our previous decision in this matter was ID# 7353598 (AAO MAY. 28, 2020).

Individuals found inadmissible under section 212(a)(2)(A) of the Act for a crime involving moral turpitude may seek a discretionary waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h). Section 212(h)(1)(A) of the Act provides for a 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. Section 212(h)(1)(B) of the Act provides for a waiver if denial of admission would result in extreme hardship to a United States citizen or lawful permanent resident spouse, parent, son, or daughter.

Any foreign national who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Act is inadmissible. Section 212(a)(6)(C)(i) of the Act. There is a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the U.S. citizen or lawful permanent resident spouse or parent of the foreign national. If the foreign national demonstrates the existence of the required hardship, then he or she must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act.

II. ANALYSIS

The issue on appeal is whether the Applicant merits a favorable exercise of discretion. For the following reasons, the Applicant does not merit a favorable exercise of discretion despite having established extreme hardship to his U.S. citizen spouse.[2]

The burden is on the Applicant to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez,* 21 I&N Dec. 296, 299 (BIA 1996). We must balance the adverse factors evidencing the Applicant's undesirability as a lawful permanent resident with the social and humane considerations presented to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. *Id.* at 300 (citations omitted). The adverse factors include the nature and underlying circumstances of the inadmissibility ground(s) at issue, the presence of additional significant violations of immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of bad character or undesirability. *Id.* at 301. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where residency began at a young age), evidence of hardship to the foreign national and his or her family, service in the U.S. Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to good character. *Id.*

In the present case, the favorable factors are the Applicant's family ties in the United States, specifically his U.S. citizen spouse, and evidence of extreme hardship upon separation from the Applicant. As discussed in our previous decision, the record demonstrates that because the Applicant's spouse is her mother's caregiver and works outside the home, the loss of the Applicant's income would result in financial hardship. The Applicant's spouse would also experience emotional hardship resulting from the loss of the Applicant's spouse's primary support and assistance with the care of her mother as well as having to earn enough income to cover her family's household expenses.

[2] While we may not discuss every document submitted, we have reviewed and considered each one.

The record also reflects that if the Applicant's spouse relocates, she would experience emotional hardship resulting from the inability to care for her ailing mother, who requires ongoing support and medical assistance. The record further reflects that the Applicant's spouse's departure could also detrimentally impact her sister's psychological and medical conditions. We concluded and the Director later affirmed that cumulatively, these concerns go beyond the usual or typical results of removal or inadmissibility and represent financial, emotional hardships that rise to the level of extreme hardship.

On appeal, the Applicant asserts that "he is the breadwinner and provider for the family in the United States," highlighting his ability to financially support his spouse and her family as another positive factor. However, without more, the record does not sufficiently establish the extent to which the Applicant has or will provide financial support to his spouse. Specifically, the Applicant has not submitted probative evidence that he has a history of stable employment either in the United States since his entry in 2017, or during the many years that he resided in Norway. For instance, the Applicant indicates that he operated a business for two years while living in Norway, which failed largely due to his mismanagement of the business. Other evidence suggests that he has periodically worked as a carpenter both in the United States and abroad, most recently during a short-term work assignment in northern California. The Applicant does not assert that he owns property or has business ties either in the United States or abroad to assist in his prospective ability to support himself and his spouse.

Unfavorable factors in the record include the Applicant's immigration violations, a lack of candor and veracity, a propensity to rationalize rather than take responsibility for his own misconduct, and a history of numerous police citations, arrests, and convictions spanning a 15-year period. For instance, on appeal the Applicant's acknowledges that he made a material misrepresentation while seeking an immigration benefit on his ESTA application by not disclosing "that he had been convicted of a crime that resulted in serious damage to property or serious harm to another person or government authority" (question 2 in the ESTA application). On appeal, the Applicant acknowledges that "in the past I have justified these untruths, trying to deny and minimize my record, rather than taking responsibility for it. . . ."

According to the Applicant's 2015 Norwegian court records he was convicted of tax evasion which was "deemed [by the court] to be a serious financial crime, [] punishable by a relatively long unconditional term of imprisonment." The court also noted:

> [T]he actions of the accused have had significant consequences [for the Applicant's] brother. The [Applicant] met with the police, passed himself off as his brother [], made a declaration to the police and signed the questioning in his brother's name. He also accepted a fine. As a result, the brother was entered in the criminal records and had an amount deducted from his wages to cover the fine. Furthermore, the [Applicant] has been operating the sole proprietorship [] in his brother's name, as a consequence of which is brother was reported for the evasion of tax and duties. This is a serious matter, which the court finds egregious."
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> . . . .

> Moreover, consideration must be given to the aggravating factor that the [Applicant] has previously accepted a fine for infringement of the Tax Assessment Act in 2003 and the Accounting Act in 2008. That he is once again committing similar contraventions shows the absence of the will or ability to comply with laws and regulations in this area.

The court records memorializing the Applicant's confession, conviction, and sentencing indicate that the Applicant was convicted of tax evasion by the government of Norway, and he was sentenced to a nine-month prison term and the payment of a substantial monetary fine. During the commission of this crime, he harmed his own brother by impersonating him, causing him to have a criminal record and to have his wages garnished to pay fines owed to the Norwegian government. In light of these facts, the Applicant's previous contention that "he had a good faith belief that the crime was not serious" at the time of filing the ESTA application is difficult to fathom. While the Applicant does not contest his inadmissibility for fraud or willful misrepresentation, we reaffirm the Director's conclusion that the Applicant's willfully misrepresented his criminal history within his ESTA application. A misrepresentation is material under section 212(a)(6)(C)(i) of the Act when it tends to shut off a line of inquiry that is relevant to the foreign national's admissibility and that would predictably have disclosed other facts relevant to his or her eligibility for a visa, other documentation, or admission to the United States. *Matter of D-R-,* 27 I&N Dec. 105 (BIA 2017).

We also consider the Applicant's ongoing attempts to withhold information regarding his criminal history while attempting to adjust status to lawful permanent resident as compelling adverse factors to consider when weighing the favorable and unfavorable factors in deciding whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. *Matter of Mendez-Moralez,* at 301. The Applicant continued to misrepresent the full extent of his criminal history within his Form I-485, Application to Register Permanent Residence or Adjust status (adjustment application) and in this waiver application. For example, he stated in his initial letter submitted in support of the waiver application:

> I have criminal convictions in Norway which arise out of a series of events that took place between 2012 and 2014. I take full responsibility for my actions and did so when I turned myself in to the police in 2014 and when I made my admissions before the court in 2015. I was wrong to do what I did, because it was dishonest and hurtful to my brother, []. I deeply regret what I did. Besides having committed a crime against a country, Norway, to which I am grateful for having taken my family in during a terrible time in Afghanistan's history and for providing me with an education and livelihood.

Importantly, only after the Director issued a request for evidence in support of the adjustment application - asking for certified original copies of the Applicant's police clearance records from Norway, did he provide the documentation, and disclose "[i]n addition to the criminal convictions from 2015, [I have] other, much older convictions between 2001 and 2008." The Applicant's immigration violations include his failure to proactively disclose his criminal history, as required by the form and instructions for the adjustment and waiver applications. The Applicant asserted in his March 2019 declaration:

> I didn't mention the crimes for three reasons. First, I thought that since my offenses involved fines for paperwork [and] traffic violations, I did not think that these were the types of offenses that [USCIS] would consider them significant in any way. The same is said for the theft and fraud type offenses that involved a small amount of money. Secondly, the crimes were old, and I thought that they would not really be considered because of the age of the offenses. Finally, as for the traffic violations, I just do not remember the vast majority of them as to when they occurred or the circumstances. It was not my intention to hide anything because I knew I would have to show a police report from Norway anyway, but I didn't think they would matter to [USCIS].

The Applicant did not comply with the criminal history disclosure requirements in his adjustment and waiver applications until after USCIS specifically requested his police clearance records from Norway, and his justifications for not doing so after the fact are not persuasive. We conclude that his explanations seek to rationalize rather than take responsibility for his own misconduct.

The Applicant's criminal history includes at least twenty citations and arrests for a wide variety of crimes ranging from moving traffic violations involving excessive speed to tax evasion, as well as theft of goods and services which resulted in financial harm to others for his own benefit. The Director detailed the Applicant's criminal history within his denials of the application; for the sake of brevity, we need not repeat it here. Some of these infractions did not result in conviction, (but some involved the Applicant's payment of financial restitution to the affected parties without conviction), and do not serve as a further basis for inadmissibility. However, the extent and circumstances of the Applicant's repeated contacts with law enforcement does call into question the Applicant's desirability as a lawful permanent resident. Additionally, it appears that the Applicant has not been truthful about his criminal past with his U.S. citizen spouse. On appeal, the Applicant avers:

> I regret for not being honest with the immigration officer who interviewed me in [redacted], hiding my past record as I did. . . . I just could not bring myself to admit the extent of my past misdeeds in front of my wife, who was sitting next to me, and whom I had not told about the extent of my record – I had only told her of my last conviction, which resulted in my going to jail. I was afraid of what she would think of me. Since that time, I have shared with her everything about my past, and I know she accepts me as I am. . . .

Notably, the Applicant has not provided statements from his spouse or other evidence to show that she is aware of the full extent of his criminal history, and his attempts to hide this information not only from U.S. immigration authorities, but also from her.

We conclude the record is replete with evidence of the Applicant's history of questionable veracity and failure to cooperate and comply with the rule of law in Norway and with U.S. immigration authorities. Therefore, we determine that the adverse factors in this matter are considerable. While we acknowledge the aforementioned favorable factors, we find that they are insufficient to outweigh the adverse factors, such that a favorable exercise of discretion is not warranted. The waiver application remains denied.

ORDER: The appeal is dismissed.