



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

Date: AUG 18 2014

Office: DETROIT

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h)

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Detroit, Michigan, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Canada who was found inadmissible 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 having been convicted of a crime involving moral turpitude. He is the beneficiary of an approved Form I-130 Petition for Alien Relative filed on his behalf by his lawful permanent resident spouse. The applicant seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his lawful permanent resident spouse.

The Field Office Director concluded that the applicant had failed to establish that he has been rehabilitated for the crime of moral turpitude that he committed, and that the applicant failed to establish that his admission would not be contrary to the national welfare, safety, or security of the United States. The Field Office Director denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Director*, dated January 10, 2014.

On appeal, counsel contends that the U.S. Citizenship and Immigration Services (USCIS) erroneously denied the applicant's application for a waiver of inadmissibility based on the applicant's alleged lack of rehabilitation, and submits additional evidence to demonstrate his rehabilitation.

The record contains, but is not limited to: Form I-290B and counsel's statement thereon; statements by the applicant, the applicant's spouse, the mother of the applicant's spouse, and the attorney who was present at the applicant's adjustment of status interview; letters of character reference and support; evidence that the applicant was previously granted nonimmigrant waivers using Form I-192, Application for Advance Permission to Enter as Non-Immigrant (I-192); documents related to the applicant's criminal conviction; and a copy of the pardon issued to the applicant by the [REDACTED]. The entire record was reviewed and considered in rendering this decision.

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

(i) [A]ny 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 . . . is inadmissible.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a

prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The criminal record reflects that on January 11, 1993, the applicant was convicted of sexual interference under section 151(a) of the Canadian criminal code by the Provincial Court [REDACTED], Canada for touching a person under the age of 14 for a sexual purpose. The applicant received a suspended sentence and was placed on probation for a period of two years.

Canada's Criminal Code, section 151, Sexual Interference, states:

151. Every person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of 16 years

(a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year; or

(b) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months and to a minimum punishment of imprisonment for a term of 90 days.

A foreign conviction can be the basis for a finding of inadmissibility only where the conviction is “for conduct which is deemed criminal by United States standards.” *Matter of Ramirez-Rivero*, 18 I&N Dec. 135, 137 (BIA 1981) (citing *Matter of McNaughton*, 16 I&N Dec. 569, 572 (BIA 1978)). However, a foreign conviction need not conform to U.S. Constitutional guarantees in order to be a conviction for immigration purposes. *Matter of Gutierrez*, 14 I&N Dec. 457, 458 (BIA 1973); *Matter of M--*, 9 I&N Dec. 132, 138 (BIA 1960).

As counsel has not disputed on appeal that the applicant’s conviction is a crime involving moral turpitude nor presented evidence that it is not, and the record does not show the finding of inadmissibility to be erroneous, we will not disturb the finding of the field office director. The applicant is therefore inadmissible under § 212(a)(2)(A)(i)(I) of the Act based on his conviction for sexual interference.

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

(h) The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in his discretion, waive the application of subparagraphs (A)(i)(I) ... of subsection (a)(2) ... if—

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or 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 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.

As the crime the applicant committed that renders him inadmissible took place, according to his criminal record, at some point between June 1, 1991 and September 30, 1992, over 15 years ago, he is eligible for consideration for a waiver pursuant to section 212(h)(1)(A) of the Act.

Section 212(h)(1)(A)(ii) and (iii) of the Act requires that the applicant's admission to the United States not be contrary to the national welfare, safety, or security of the United States and that the applicant establish his rehabilitation. Evidence in the record to establish the applicant's eligibility

under section 212(h)(1)(A)(ii) and (iii) of the Act includes the applicant's pardon from the [REDACTED] notices of approval of the applicant's Form I-192 waiver applications; statements from the applicant, the applicant's spouse, the applicant's mother-in-law; and letters of reference.

[REDACTED] issued a pardon to the applicant March 3, 2004. Foreign pardons do not eliminate a criminal conviction for immigration purposes. *See, e.g., Matter of Marino*, 15 I&N Dec. 284, 285 (BIA 1975) (citing *Palermo v. Smith*, 17 F.2d 534, 535 (2d Cir. 1975); *Matter of Adamo*, 10 I&N Dec. 593 (BIA 1964); *Matter of B-*, 7 I&N Dec. 155 (BIA 1956); *Matter of M-*, 9 I&N Dec. 132, 134 (BIA 1960); *Matter of G-*, 5 I&N Dec. 129 (BIA 1953)). However, the pardon issued to the applicant states that it is evidence to [REDACTED] that, after making proper inquiries, the Board is satisfied that the applicant has remained free of any conviction since completing the sentence and was of good conduct and that the conviction should no longer reflect adversely on his character.

The record indicates that on April 24, 2000, the applicant was granted permission to enter the United States as a temporary visitor pursuant to section 212(d)(3) of the Act after submitting a Form I-192. Section 212(d)(3) of the Act states that an alien applying for a nonimmigrant visa who is inadmissible under certain sections of the law, including section 212(a)(2)(A)(i)(I) of the Act, may be admitted into the United States temporarily in the discretion of the Attorney General.

The standard for a nonimmigrant visa waiver is based on the case precedent of *Matter of Hranka*, 16 I&N Dec. 491 (BIA 1998). In *Matter of Hranka*, the Board of Immigration Appeals balanced the relative seriousness of the grounds of inadmissibility against the minor risk of harm to society presented by admission of the alien because of her rehabilitation and her justifiable reasons for wanting to come to the United States. Therefore, in order for Form I-192 to be approved, the applicant must demonstrate rehabilitation. The instructions to the Form I-192 require the applicant to submit evidence and/or a written account demonstrating rehabilitation and character reformation related to the reason for being inadmissible.

In addition to the initial grant of the Form I-192 on April 24, 2000, evidence in the record shows that the applicant was subsequently granted Forms I-192 on June 25, 2001, July 1, 2002, June 11, 2003, and March 30, 2004. On August 15, 2008, the U.S. Customs and Border Protection issued a letter to the applicant stating that his Form I-192 was approved for a period of five years from the date of approval. Thus, the record indicates that the applicant has demonstrated rehabilitation multiple times in the approvals of his Form I-192 applications since April 24, 2000.

The record includes a statement from the applicant's spouse dated April 10, 2012 attesting to the applicant's character, honest and faithfulness. The applicant's mother-in-law submitted a statement dated September 24, 2012 attesting that the applicant is a person of high character and morals. The record also includes a letter from an elder at the applicant's congregation attesting to the applicant's good moral character. The record further includes letters from the applicant's employers and union attesting to his good character.

The Field Office Director stated that during the applicant's interview for adjustment of status with USCIS on July 9, 2013, the applicant stated with respect to his criminal conviction that he "did not think that the event was a big deal, and still do[es] not think that it was a big deal," and, as such, determined the applicant had failed to establish that he has been rehabilitated for the crime of moral turpitude that he committed. See *Decision of the Director*, dated January 10, 2014. On appeal, the applicant submits a sworn statement that he did not state that his criminal conviction was not a big deal during his July 9, 2013 interview. The record also includes a sworn statement from the applicant's wife, who says she was present at the interview, and that the applicant never made the statement during the interview. The record further includes a sworn statement from the attorney who was present at the USCIS Detroit Field Office during the interview never stated that the event related to his 1993 conviction was "not a big deal" or that "he thought it was not a big deal." We note that as the record does not contain a record of sworn statement from the applicant's July 13, 2013 interview with USCIS, it is unclear what he stated concerning his criminal conviction. Further, as the applicant has demonstrated rehabilitation through the evidence cited above, we find it unnecessary to determine what statement was made by the applicant at the interview.

Based on the record, the AAO finds that the applicant has demonstrated rehabilitation and that his admission to the United States would not be contrary to the national welfare, safety, or security of the United States pursuant to section 212(h)(1)(A) of the Act. However, the grant or denial of the waiver does not turn only on the issue of rehabilitation. It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. See *Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country'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 the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf 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 favorable factors in this matter are the applicant’s marriage to a lawful permanent resident, his pardon for his crime by the Government of Canada, his multiple grants of permission to enter as a nonimmigrant after his criminal conviction, his history of gainful employment in the United States, the apparent lack of any further criminal convictions during the past 21 years, and letters of reference on his behalf. The unfavorable factor in this matter is the applicant’s criminal conviction in 1993.

The crime committed by the applicant is serious in nature. However, the favorable factors in this matter outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

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 been met.

ORDER: The appeal is sustained.