U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF W-N-

DATE: JAN. 13, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of Ghana, seeks a waiver 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.

The Field Office Director, Buffalo, New York, denied the application. The Director concluded that the Applicant was inadmissible under section 212(a)(2)(A)(i) of the Act for having been convicted of three crimes involving moral turpitude, and section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation on two separate occasions. The Director found that the Applicant did not establish extreme hardship to any qualifying relatives and that he did not warrant a favorable exercise of discretion. We dismissed a subsequent appeal, upholding the Director's findings of inadmissibility and extreme hardship.

The matter is now before us on a motion to reopen and a motion to reconsider. The Applicant argues on motion that our previous decision was arbitrary and unjustified. He submits additional evidence in support of the motion.

Upon *de novo* review, we will deny the motion to reconsider and deny the motion to reopen.

I. LAW

A motion to reopen must state the new facts to be provided and must be supported by affidavits or other documentation. *See* 8 C.F.R. § 103.5(a)(2). Any new facts must relate to eligibility at the time the Applicant filed the application. *See* 8 C.F.R. § 103.2(b)(1), (12); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A motion to reconsider must offer the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. *See* 8 C.F.R. § 103.5(a)(3). A motion to reconsider is based on the existing record and the Applicant may not introduce new facts or new evidence relative to his or her arguments. A motion to reconsider contests the correctness of

the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new materials. *Compare* 8 C.F.R. § 103.5(a)(3) *and* 8 C.F.R. § 103.5(a)(2).

II. ANALYSIS

The Applicant has not cited any pertinent precedent decisions or argued that our previous decision was based on an incorrect application of law or USCIS policy. Rather, the Applicant contends only that our prior decision "err[ed] in [our] recitation of the procedural history in this matter" and did not give sufficient weight to his claim of extreme hardship. Therefore, his submission does not meet the requirements of a motion to reconsider. However, we do find that the new evidence submitted with the motion suffices to meet the requirements of a motion to reopen. We additionally find that the Applicant has demonstrated that a qualifying relative would experience extreme hardship upon denial of his waiver application. However, the Applicant has not established that he merits a waiver as a matter of discretion.

On motion, the Applicant submits, among other documents: a brief; an updated affidavit from his wife; and copies of unpaid bills. With his Form I-601, he submitted, in part: statements from his wife and children; letters of support, including from his church; a psychological evaluation; copies of medical records; copies of amended tax returns; photographs; conviction documents; and country conditions information for Ghana. We have considered all the evidence in the record.

The totality of the evidence, including the additional evidence submitted on motion, now demonstrates that the Applicant's spouse would experience extreme hardship if admission is denied. Nonetheless, we find that the record remains insufficient to warrant a favorable exercise of discretion.

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 at 299. 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.*

Here, the record shows that the Applicant admitted to using another individual's passport to enter the United States in 1992. In addition, the record indicates that the Applicant hid in a car to enter Canada in 2000 and then attempted to reenter the United States approximately 1 week later using another individual's Canadian citizenship card. Furthermore, the record shows that in 2007, the Applicant was convicted of the felony offenses of conspiracy to file false claims with the Internal Revenue Service, transfer and use of stolen Social Security numbers, and trafficking in fraudulent alien registration cards.[1] *See* 18 U.S.C. §§ 286, 1028(a)(7), and 1546, respectively. In 2014, the record shows the Applicant attempted to enter Canada using another individual's identity. In 2016, the Applicant was removed from the United States.

We do not find that the favorable considerations in this case, including the Applicant's family ties in the United States, his residence in this country from approximately 1992 until 2016, the hardship his wife and sons have experienced and will continue to experience, and his service as a choir leader for his church, outweigh the serious negative factors. Although the Applicant claimed in his appeal brief that he obtained a license as a certified nursing assistant, the record does not contain evidence of this license or his employment as a nursing assistant. Similarly, although he claimed on appeal that he has held two jobs consistently for ten and eleven years, the record contains only one letter from an employer dated December 2010, confirming his employment for five years, since November 2005. The record includes a transcript of his Immigration Court proceedings indicating that the Applicant expressed apologies for the inconvenience he has caused; however, the record does not contain any written statement from the Applicant taking responsibility or expressing remorse for his actions. Several individuals submitted letters of support for the Applicant, but there is no acknowledgement they are aware of the Applicant's specific criminal convictions or immigration violations, with only one letter mentioning that the Applicant "has contravened the law of the land." As such, we do not find that these letters provide sufficient detailed, probative evidence of the Applicant's good moral character. When taken together, we find that the favorable factors in the present case do not outweigh the significant adverse factors that show a continued disregard for the law.

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. The Applicant has not established that he warrants a favorable exercise of discretion to grant his waiver application.

ORDER: The motion to reopen is denied.

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[1] Although the Applicant contends in his brief on motion that he lacked "the *Mens Rea* required for a crime involving moral turpitude," he also asserts that "the Applicant has not contested the finding of a crime involving moral turpitude in this matter, [only] the circumstances surrounding his arrest . . . ." We find that the Applicant's inadmissibility is supported by the record and that the Applicant does not contest his inadmissibility under section 212(a)(2)(A)(i) of the Act for having been convicted of a crime involving moral turpitude, and section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of W-N-*, ID# 48694 (AAO Jan. 13, 2017)