



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

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

In Re: 26480822

Date: JUN. 06, 2023

Appeal of Saint Thomas, U.S. Virgin Islands Field Office Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant, a native and citizen of Lithuania, 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). The Director of the Saint Thomas, U.S. Virgin Islands Field Office denied the application, concluding that the record did not establish that she merited favorable exercise of discretion. The matter is now before us on appeal. 8 C.F.R. § 103.3. The Applicant argues that she provided sufficient evidence to establish her qualifying relatives would suffer the requisite level of hardship and that she merits a favorable exercise of USCIS' discretion.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

Section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), provides that any noncitizen 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)(i)(I) of the Act for a crime involving moral turpitude may seek a discretionary waiver of inadmissibility under section 212(h) of the Act. Section 212(h)(1)(A) of the Act provides for a discretionary 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 noncitizen has been rehabilitated. Alternatively, a waiver is available for individuals who demonstrate that denial of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident (LPR) spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act.

The record reflects the Applicant, in [] 2015, pleaded guilty in the [] County Circuit Court in [] Illinois to the offense of Theft by Deception over \$500 but less than \$10,000, in violation of Illinois Criminal Statute section 5/16-1(A)(2). She was sentenced to two years of probation.

The Director found the Applicant inadmissible based on that the conviction for a crime involving moral turpitude. The Applicant does not contest that it is a crime involving moral turpitude nor that it renders her inadmissible. However, she argues on appeal that the Director erred in concluding the Applicant did not establish eligibility for a waiver of this ground of inadmissibility. The Applicant contends the Director did not properly consider all the evidence she submitted of her positive equities and further erred in identifying some of her equities.

The Applicant first points to the Director's misidentification of one of her qualifying relatives as an indication that the Director did not meaningfully consider the evidence in the record. The Director found the Applicant had an LPR son who was a qualifying relative, which is incorrect. Rather, the Applicant has an LPR daughter.

The Applicant further argues the decision lacks evidence that the Director considered many of her positive equities. The Director did not specifically address evidence of significant positive factors in the record, including evidence of the Applicant's support of her LPR daughter and granddaughter; the care the Applicant provides her LPR mother-in-law; positive community ties, as shown through letters of support; and the Applicant's business ownership and nature of her employment, which she further argues the Director specifically mischaracterized.

In denying the waiver, the Director made no conclusion as to whether the Applicant established her qualifying relatives would suffer extreme hardship if her waiver were denied. The Director noted only that the Applicant presented evidence of 18 years of residence in the United States, that she had a LPR son and U.S. citizen spouse, that she has filed income taxes for 11 years, and that she has been a day care employee for an individual for two years. The Director concluded that the Applicant "did not provide any additional positive factors." As noted, the Applicant provided evidence of equities that were not addressed in the decision, which lacked a conclusion as to whether the Applicant established her qualifying relatives would experience the requisite level of hardship if her waiver were denied. We therefore remand the matter for the Director to fully consider all the evidence in the record and determine if the Applicant has established extreme hardship to a qualifying relative and if so, whether she merits a favorable exercise of discretion.

In light of the deficiencies described above, we hereby withdraw the Director's decision and remand the matter for further consideration of the Applicant's eligibility for a waiver. If a determination is made that the Applicant is not eligible for a waiver, the Director shall issue a new decision containing a more comprehensive analysis of the evidence with a complete explanation of the basis for denial of the waiver application.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.