U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28770718

Date: NOVEMBER 17, 2023

Appeal of Nebraska Service Center Decision

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

The Applicant, a native and citizen of Australia, seeks a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h), for having been convicted of a crime involving moral turpitude. The Director of the Nebraska Service Center denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the Applicant is statutorily ineligible for a waiver of inadmissibility because she was convicted of an aggravated felony after admission to the United States as a lawful permanent resident (LPR). The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant submits a brief and additional evidence.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. 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 dismiss the appeal.

## I. LAW

A 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. Section 212(a)(2)(A)(i) of the Act. A discretionary waiver is available if denial of admission would result in extreme hardship to a United States citizen or LPR spouse, parent, son, or daughter. Section 212(h)(1)(B) of the Act.

A waiver is not available to a noncitizen who has previously been admitted to the United States as lawfully admitted for permanent residence if since the date of such admission the noncitizen has been convicted of an aggravated felony. Section 212(h)(2) of the Act.

Section 101(a)(43)(M)(i) of the Act defines an aggravated felony, in part, as "an offense that . . . involves fraud or deceit in which the loss to the victim or victims exceeds $10,000."

## II. ANALYSIS

The issue on appeal is whether the Applicant is eligible for a waiver due to her inadmissibility for committing a crime involving moral turpitude. The record establishes that the Applicant was admitted to the United States as an LPR in December 1981. On [redacted] 2006, she was convicted of wire fraud in violation of 18 U.S.C. § 1343, a crime involving moral turpitude. She was sentenced to 42 months imprisonment and ordered to pay $252,243 in restitution. On [redacted] 2010, she was ordered removed from the United States for having been convicted of an aggravated felony, and on [redacted] 2010, she was removed from the United States.

On appeal, the Applicant contends that the Director erred in concluding that her conviction is for an aggravated felony by focusing on the amount of restitution ordered rather than the amount of monetary loss to the victims as required under section 101(a)(43) of the Act. She asserts that the monetary loss associated with her offense is reflected as "$0.00" in the "Criminal Monetary Penalties" section of her conviction documents, and because the monetary loss to the victims of her offense is not over $10,000, her conviction was not for an aggravated felony.

We first note here that while there is no data entered under the "Total Loss" portion of the "Criminal Monetary Penalties," section of the conviction documents, there is a footnote stating that "findings for the total amount of loss are required under "chapters 109A, 110, 110A and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 13, 1996." Thus, the fact that the conviction documents do not contain a loss amount is indicative of the fact that it was not required to record such information for the Applicant's conviction. Further, contrary to the Applicant's contention, "it is well established that an order of restitution may be relied upon to determine if the loss to the victim was greater than $10,000, as long as that order is sufficiently tethered to the convicted conduct and shows the actual loss from the offense of conviction." Matter of F-R-A-, 28 I&N Dec. 460, 462 (BIA 2022); see also Nijhawan v. Holder, 557 U.S. 29, 42-43 (2009) (noting that the restitution order demonstrates that the losses to the victims were greater than $10,000).

Here, the record reflects that at the time of her offense, the Applicant was an independent travel broker specializing in tour packages for individuals and groups. Travel agencies sent the Applicant payments and credit card information from customers, relying on her to use the funds to make travel arrangements, and she used her access to an extensive number of credit card accounts to commit and conceal her criminal conduct.[1] Court disposition records reflect that the Applicant pleaded guilty to wire fraud and was ordered to pay restitution to 12 named travel agents/agencies for a total amount of $252,243. Based on the totality of evidence, the record establishes that the restitution order was sufficiently tethered and traceable to the conduct leading to the Applicant's conviction. As such, the Applicant has been convicted of an aggravated felony involving fraud or deceit under section 101(a)(43)(M)(i) of the Act in which the loss to the victims exceeded $10,000.

[1] While the Applicant did not provide complete records of her court proceedings, details of her criminal activity and court proceedings are contained in the United States Court of Appeals for the Fourth Circuit's (Fourth Circuit) decision on her appeal. In that decision, the Fourth Circuit notes that the district court did not err in finding that the Applicant obstructed justice or in enhancing the Applicant's sentence for abusing a position of trust pursuant to section 3B1.3 of the U.S. Sentencing Commission Guidelines – an enhancement which applies when a defendant abuses a position of public or private trust in a manner that significantly facilitated the commission or concealment of the offense.

Upon de novo review, the Applicant is not eligible for a waiver of inadmissibility under section 212(h) of the Act because she entered the United States as an LPR and subsequent to her admission was convicted of an aggravated felony. Accordingly, the waiver application remains denied.

ORDER: The appeal is dismissed.